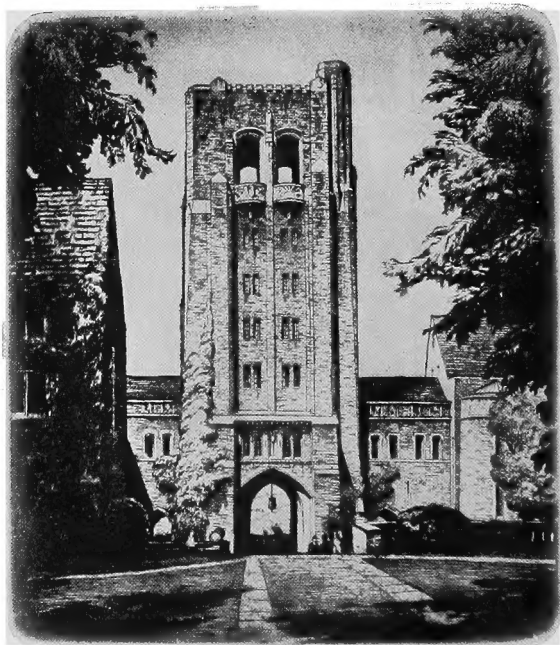


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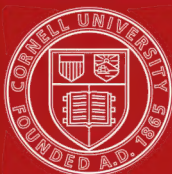
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THE
BUSINESS MAN'S
LAW LIBRARY,

AND
PRACTICAL ASSISTANT,

DESIGNED FOR

Merchants, Mechanics,

NOTARIES, JUSTICES, LAWYERS, LANDLORDS, TENANTS,
MANUFACTURERS, FARMERS, SHIPOWNERS, CAR-
RIERS, ENGINEERS, ARTIFICERS, ETC.

WITH

A SUPPLEMENT,

COMPRISING

DIRECTIONS AND FORMS FOR THE EXECUTION AND
ACKNOWLEDGMENT OF DEEDS TO BE USED OR RECORDED
IN OTHER STATES — DUTIES AND LIABILITIES OF EXECUTORS,
ADMINISTRATORS, GUARDIANS, PARTNERS, PRINCIPAL AND
AGENT — LIABILITIES OF MINORS — RATES OF INTER-
EST AND PENALTY FOR USURY, ETC., ETC.

BY I. R. BUTTS.

ASSISTED BY MEMBERS OF THE BAR.

PUBLISHED BY

I. R. BUTTS, No. 2 SCHOOL STREET, BOSTON.

1859.

TESTIMONIALS.

FROM HON. NEILL S. BROWN, LATE GOVERNOR OF TENNESSEE.

I have examined to some extent, a work by I. R. Butts, Esq., entitled "*Business Man's Law Library and Practical Assistant, with Supplement*," and I have no hesitation in saying that it deserves the patronage of all business men. It contains a vast amount of information in a form clear and condensed; and so far as I have been able to discover, it is free from inaccuracies. It is designed mainly for the use of the merchant and mechanic, but the lawyer will also find it useful in his profession.

FROM JAMES R. M. BRYANT, PROFESSOR OF LAW IN INDIANA UNIVERSITY.

I have given a cursory examination to a work entitled "*Business Man's Law Library*," by I. R. Butts, which appears to me to be a work well calculated for reference, and information to business men. So far as it relates to legal rights, its authorities and points are taken from sources of acknowledged authority in law. I regard it as a very useful work embracing as it does so much information in a condensed form on various branches of business.

FROM HON. SAMUEL H. JENKS, BOSTON, NOTARY PUBLIC, JUSTICE OF THE PEACE, &c.

As an act of justice due you for the advantage derived not only from an examination, but from a practical use of your valuable publication, I am bound to say that I have found it of great utility as a work of reference and authority, in all matters connected with the varied branches of my profession.

I consider your book as an indispensable appendage to my official desk—as a manual to which every man of business may confidently resort in cases of doubt—as a compendium of all those principles of law which regulate social intercourse, and govern the Trading community. It indeed evinces extraordinary research, and great power of systematic condensation—entitling them to every success that may consist with your fondest hopes.

FROM HON. HENRY WILSON, UNITED STATES SENATOR.

I have examined with care your *most excellent work for Business Men*, and I regard it as a work of great value to all persons who are engaged in business transactions. As a work of reference and authority it must be to all men in active life of great utility, and I can most cheerfully recommend it as a valuable aid to persons in all departments of business.

BRIEF SUMMARY

OF THE

CONTENTS OF THE WORK.

BOOK I.

The *first book*, 'THE BUSINESS MAN'S ASSISTANT & READY RECKONER,' embraces a collection of *forms* of Agreements for Buying, Selling, Manufacturing, Building, and other purposes ; Copartnership Agreement ; Bonds of Indemnity, Sale of Land, Arbitration, &c. ; Bill of Sale of Goods ; Assignments of Bonds, Contracts, Leases, Mortgages, Wages, Estates in Trust for Creditors, &c. ; Awards of Arbitrators for loss by Fire, for Valuation of Land, &c. ; Deeds of Land, Leases, Mortgages of Chattel and Real Estate ; Notices from Landlord and from Tenant ; Guarantees for Payment of Goods, Credit, to Stop Legal Proceedings, of Rent ; Compounding with Creditors ; Powers, or Letters of Attorney for various purposes ; Release of all Demands, Rent, Contract, Note, and Dower ; Petitions, various forms of ; form of Marriage ; Wills, Codicil.— Laws regulating Mortgages of Real and Personal Property, Contracts, Tender, Guarantees, Damages, Deeds, Wills, Bonds, Arbitration, Releases, &c. ; Notices of Discontinuance of Easement ; Witnesses' Certificate of Entry of Mortgagee for the purpose of foreclosing Mortgage—Together with a larger number of Rules, Practical Tables and Ready Reckoners, for Artificers, Engineers, Builders, Measurers, Lumber, Iron, Stone, Coal Dealers, &c., than are to be found in any other work. Book-keeping, with Instructions and Examples. Directions to those having business to transact at the Patent Office, with Forms of Petition, Assignment, &c. Rates of Postage in the United States and between the U. States and Foreign Countries.

BOOK II.

The *second book*, 'THE TRADER'S GUIDE,' is a compend of the Laws of Trade, comprising the Law regulating Bills of Exchange, Promissory Notes, Drafts, Checks, Releases, Receipts, Endorsements, Acceptances, Contracts, (express, simple, and implied,) Sales, Delivery, and Warranty of Goods, Estates, Horses, &c., Fraud, Damages on Protested Bills and Outlawry of Debts in all the States, Insolvency, Payments, Interest, Off-set, Trusteeing ; Mode of Collecting Debts in all the States, and Exemptions from Attachment, &c. ; Rights of Husband over Wife's Property, and Rights of Wife over her own ; forms of Affidavits, Depositions, Endorsements, Notes, Bills, &c. ; Legality of Book Accounts, Settlements, and Receipts ; Forms for Protested Bills of Exchange, Notes, &c. ; General and Mechanics' LIEN LAWS.

BOOK III.

The *third book*, 'THE LANDLORD'S AND TENANT'S ASSISTANT,' contains the Legal Rights and Duties of Landlords and Tenants, in relation to *Hiring* and *Letting Houses, Stores, &c.*, to Assigning, Repairing, Taxes, Holding over, Fixtures, Forfeiture, Waste, Ejectment, Water, &c. ; with *forms* of Leases, Assignments, Notices for Non-payment of Rent and to Determine Ten-

ancy, Guarantees for Payment of Rent, and *special covenants* not found in the printed leases, &c. Also, Rules of Law respecting Division Fences, Defective Fences, Partition Walls, Trespass of Cattle, Right to Highways, Private Ways, and Running Water, Removal of Nuisances, Obstructing Doors, Windows, Ancient Lights, Negligence, &c.

BOOK IV.

The *fourth book*, 'THE MERCHANT'S ASSISTANT, COMMON CARRIER'S AND INSURER'S GUIDE,' contains the Rules of Law regulating the Liabilities of Shippers, Shipmasters, Steamboats, Railroads, Common Carriers on Land, Sea, Lake, River, Canals, Ferrys, Forwarders, Bailees, Consigners, Consignees, Charterers, Freighters. Law regulating Insurance, General Average, Delivery of Goods, Demurrage, Collisions, Bills of Lading, Stoppage in Transitu, &c. United States Steamboat Laws for the Safety of Passengers. *Forms* for Adjusting General Average, for Abandonment, Surveys of Ship, Cargo, Charter Party, Protests against loss by storms, jettison, collisions, &c., against Master for refusing to sign bill of lading in customary form, against Master for not proceeding to sea, after signing bill of lading, against Consignee for not taking goods from vessel and discharging her within a reasonable time, Bill of Lading, with directions to captain how to sign under certain contingencies. Bottomry, Respondentia, and other Bonds. Seamen's and Boatmen's Table of Wages by Day and Month.

BOOK V.

The *fifth book*, "THE SEQUEL TO THE BUSINESS MAN'S LAW LIBRARY," contains the General Requisites in relation to the Nature, Execution and Acknowledgment of Deeds.

DIRECTIONS and FORMS for the Execution and Acknowledgment of Deeds, and other Instruments to be Used or Recorded in every State in the Union.

FORMS of DEEDS to a City, by a Town, by a Tax Collector, of Trust, by Sheriff, by Executor, by Administrator, by Guardian, by a Corporation, &c.

Duties of Executors, Administrators, and Guardians.

FORM of ACCOUNT for Administrator and Executor; Tables to estimate the Value of a Widow's Dower.

Rights and Duties of Parents and Children. Liabilities of Minors. Void and Voidable Acts of Minors.

Constructions of Wills; Witnesses required; Forms of Wills; Decisions of Courts in relation to Wills.

PARTNERSHIP—how constituted; how persons may involve themselves in the liabilities of Partners; how and when can Partnership be dissolved; what constitutes a Partnership; what dissolves a Partnership; when can a Partner withdraw; on the death of a Partner, what course is to be taken by his representatives to bring the survivor to a Settlement; how must notice be given of a Dissolution of Partnership; what neglect of the outgoing Partner will involve him in liability for the debts of the Firm.

Special Partnership, how constituted; Forms of Agreement of Partnership; liability of Partner; how Partnership is to be conducted; what neglect, or omission, will change a special into a general Partner.

PRINCIPAL and AGENT—what constitutes an Agent; implied agency, how created; duty of an Agent; how is Principal held bound by the acts of his Agent.

Usury and its Penalties, with Rates of Interest in all the States. Cheating and obtaining Money or Goods by False Pretences. Fraud, what constitutes, and the duty of buyer and seller.

BUSINESS MAN'S ASSISTANT

AND

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THE NEW
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READY RECKONER,
FOR THE USE OF
MERCHANTS, MECHANICS, AND FARMERS,
CONSISTING OF
LEGAL FORMS & INSTRUCTIONS
INDISPENSABLE IN BUSINESS TRANSACTIONS;
AND A GREAT VARIETY OF USEFUL TABLES.

By I. R. BUTTS,

Author of the "Business Man's Law Library,"—"The Merchant's, Shipmaster's and Mechanic's Assistant,"—"The Laws of the Sea," &c., &c.

B O S T O N :

PUBLISHED BY I. R. BUTTS & CO.
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(Over Ticknor & Field's Bookstore.)

1859.

P R E F A C E.

THIS work is prepared for the use of Merchants, Mechanics, Farmers, and business men generally. Its object is to furnish them with a Collection of the most useful FORMS of CONTRACTS and LEGAL INSTRUMENTS which occur in business transactions, and such INSTRUCTIONS and RULES of LAW in relation to them, as will enable persons of ordinary capacity, to write and execute their *Agreements, Deeds, &c.*, without applying to an attorney.

In addition to its value as a *Legal Manual* it contains a greater number and variety of *practical Tables* than are to be found in any other work of similar size; — among which are Tables for *Lumber Dealers, Wood Dealers, Iron Dealers, Coal Dealers, &c.*, giving Board, Plank, and Timber Measure, Timber and Saw Logs reduced to Inch Board Measure, Scantling, Log Measure, &c.; Bark, Wood, and Coal Measure; Iron, Copper, Brass, and Lead Measure; Iron, Copper, and Lead Pipe Measure; Produce, Merchandise, Wages, Wood, Coal, Hay, and Bark Ready Reckoners, &c.; Interest, Equation, Gold and Silver Coin Tables.

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There can no where be found so comprehensive a compend of business *forms and facts* for every day use, as this *valuable Assistant*.

Entered according to Act of Congress, in the year 1852,
BY I. R. BUTTS,
Clerk's Office of the District Court of the District of Massachusetts.

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NOTE.

In all Indentures or Agreements, the date may appear either at the commencement or close of the contract as "*Memorandum of Agreement made this tenth day of October, 1856, by and between A. B. and C. D.*" in which case the close should read,—"In witness whereof, they have hereunto interchangeably set their hands and seals [if sealed] on the day and year first above written." Or the date may be omitted at the commencement and inserted at the close, as follows:—"Witness our hands and seals the ... day of ..., 1857."

In all sealed instruments, or written contracts, it is well to have two subscribing witnesses to the signatures, who will write their names under either of the following terms:—"Signed, sealed, and delivered in presence of" or, "Executed in presence of"—or, "In presence of"—or simply, "Attest."

The repetitions which abound in the written and printed forms, such as "covenant and agree,"—"give, grant, bargain, sell, and convey, and do grant, &c., and have granted," &c., may always be omitted; so may the words "executors, and administrators," [see page 27]; so, also, "assigns" usually need not be named; if a covenant relate to any thing in being the assignee is bound, though not named; if to any thing personal to the contracting party he is not bound, though named; but in a contract relating to something not then in existence, but to be done on land leased, as to build a wall, a house, or the like, upon the premises, the assignee will be bound, if named, but not otherwise.

THE BUSINESS MAN'S ASSISTANT.

LAWS REGULATING CONTRACTS.

Contracts are either *express* or *implied*. *Express* when the terms are openly uttered at the time of making. *Implied* are such as reason and justice dictate, and which the law presumes every man undertakes to perform. For instance, if there is no stipulation as to the price, when one sells goods, or performs labor for another at his request, the law implies a promise to pay for such goods, or labor, so much as they are reasonably worth. It is also an implied condition of work and labor, that it be done in a suitable and workmanlike manner. But the law will never imply a promise against a party's express declaration made at the time.

A *simple* contract or agreement, whether *verbal* or in *writing*, without a *sufficient* consideration, is totally void in law, and the parties cannot be compelled to perform it. There is but one exception to this rule, and that applies to negotiable instruments in the hands of an innocent indorsee. But if a contract is deliberately made, without fraud, and with a full knowledge of the circumstances, any damage, suspension, or forbearance of a right, will be *sufficient consideration*. When promises are mutual, and the one the consideration of the other, they are valid. A guaranty for the payment of a note, like any other promise, without any consideration, is void, 4 Pick. 389; unless the undertaking is contemporaneous with the original debt. The consideration is not always the governing principle on which the validity of contracts depends, for contracts which are contrary to public policy, or the principles of morality, or in contravention of express statutes, or principles of law, cannot be enforced, although founded on a legal consideration. If any part of the entire consideration of a contract is illegal, as against morals or public policy, the whole is void.

Among contracts contrary to public policy, is that of a man binding himself not to exercise his trade or business; but if, for a *valuable consideration*, he engages not to exercise his trade in a particular place, he may exercise it elsewhere.—Thus, an agreement not to run a stage coach on a particular road—or with a mechanic or tradesman, to give the purchaser all his custom—or not to carry on his business within a certain distance, for instance, ten miles, is good, and the contract will not be impeached, either in law or equity. — A bond that the obligor shall never carry on, or be concerned in, the iron business, is void. 19 Pick. 51.

A Contract may also be void for want of some formality required by law. The *English Statute of Frauds* has been *substantially* copied in nearly all the States. It provides that—in the following cases,—every agreement shall be void unless the same, or some note or memorandum thereof, be in *writing*,* and subscribed by the party to be charged therewith.

1. Every agreement that, by its terms, is not to be performed within one year, from the making thereof. 2. Every special promise to answer the debt, default, or misdoings of another. 3. Every contract for the sale of any lands, or any interest in lands.

Every contract for the sale of any goods, chattels, or things, for the price of ten pounds †, or more, is void, unless

* In New York the Contract is void if the consideration be not expressed in the instrument. In Maine, Massachusetts, Vermont, Indiana, and other States, it is not required.

† In the following States the amount has been fixed by Statute:—Maine and New Jersey, \$30; New Hampshire, \$33; Vermont, \$40; Connecticut, \$35; Missouri, \$30; New York, Massachusetts, Wisconsin, and Indiana, \$50.

1. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged thereby, or their agents; or
2. Unless the buyer shall accept and receive part of such goods; or
3. Unless the buyer shall, at the time, pay some part of the purchase money; or give something in earnest to bind the bargain.

If after a verbal contract for the delivery of goods, the vendor deliver to the vendee a bill of parcels, it will be a sufficient memorandum in writing. 11. Mass. 6. So a broker being the agent of both buyer and seller his signature binds both parties; and so of an auctioneer.

The *letting* of a house, store, &c., for more than *one year* is *void*, unless the same is in *writing*; so is an agreement for a years' service, to commence at a subsequent day; — so is a contract to sell goods, exceeding a certain sum; so is an agreement for the sale of land, &c.

GUARANTEE. The character of a contract or guarantee is a collateral engagement to answer for the *debt, default* or *miscarriage* of another. The contract is in its nature special, and not negotiable, and no suit can be maintained upon a guarantee except by the party with whom this contract is made. 19 Maine, 359.

The primary meaning of a guarantee is an undertaking to pay the debt of another in case he does not pay it. 24 Pick. 250.

If two parties go together into a warehouse or shop, and, upon the one selecting and giving an order for goods, the other engages verbally to pay for those goods in case the other does not; in whatever form of words that promise is made or given, he is not bound by it — it must be reduced to writing.

When, however, the credit is *not* given to the buyer, but to the guarantor in the first instance, as where A. tells a merchant that he will be responsible for goods purchased by C. and the merchant charges the goods to A. the promise need not be in writing to bind the guarantor. 6 Blackf. 357; 3 Johns. Rep. 29.

A guarantee must be founded on some consideration. It is enough however if the person for whom the guarantor becomes surety, receives a benefit, or the person to whom the guarantee is given suffer inconvenience, as an inducement to the surety to become guarantee for the principal creditor. Chitty on Contracts, 436.

An engagement on the back of a lease, to guarantee the engagement of the lessee, is binding, though no consideration be expressed. The permitting the lessee to occupy is sufficient to raise a consideration for the promise. 12 Mass. 137.

There is an advantage from having a guarantee under seal, particularly if it is for a considerable sum.

A matter of first moment for consideration, is, whether a proposed guarantee is to be confined to a single transaction, or to extend to more than one or to future transactions; and to what precise amount or amounts it is to be confined or extended; or whether to be generally extended to all acts and to any amount; also, to what precise period of time it is intended it shall extend, if to be prospective. [See Guarantees, at p. 46.]

A guarantor ought to take care to be indemnified against loss, in the event of being called on to pay the debt. With this view indemnities are given (frequently, but not always or necessarily, by bond) holding harmless him who, under an undertaking to be responsible for the debt or engagements of another, becomes chargeable or liable for the debt.

Care should be taken, if it be intended to look to the guarantor, not to deal with the principal; such as agreeing to give him further time after a bill, or note, or other undertaking has become due; or accepting a renewed or other bill from him without the concurrence of the guarantor; for, if such a course be taken, it will discharge the guarantor from his liability

CONTRACTS MADE ON SUNDAY. A Note or other Contract written on Sunday is void; but it is not void, though written on Sunday, if it be delivered on some other day. 19 Ver. 358. When a Contract is written on Sunday, it is competent on another day for the other party to demand a return of the thing delivered, and where impracticable, compensation; and if the other party refuse, the original contract becomes thereby affirmed and binding. 19 Ver. 358.

CONSTRUCTION OF A CONTRACT. In the construction of Contracts, the intention of the parties must govern; words are to be taken in their natural and obvious sense; when the intention is doubtful, the context may be resorted to to explain ambiguous terms; the whole of the instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. The law does not, in general, require a formal contract drawn up with technical precision. And the useless repetitions, which often encumber legal instruments, may always be omitted, as they give no additional strength to the contract.

Where the language of an agreement is plain and unequivocal, there is no room for construction, and it must be carried into effect according to its plain meaning.

Ambiguities in deeds or other instruments are generally interpreted against the grantor, or contractor. So where a man gave a note expressed to be "for money borrowed, which I promise *never* to pay," it was held that the word *never* might be rejected. So if a man promises to pay in a short time, it is void for uncertainty, but if he promises to pay without mention of time, it will be taken to mean on demand. And so in an exception in a lease, if there be any doubt about the meaning of the exception it shall be construed against the lessor.

An agreement shall have a reasonable construction according to the intent of the parties.

The defendant promised the plaintiff, in consideration of a wagon delivered to him by the plaintiff, at the time of the contract, to break up for the plaintiff sixteen acres of new ground on or before a certain day. Held that the piece of ground to be broken up, if not specified in the contract, might be designated by the plaintiff. 8 Blackf. 571.

A sale for approved indorsed paper means in law a sale for paper which ought to be approved, and not for paper such as the seller may approve. 4 Serg. & R. 1.

A party is bound, in the absence of any misrepresentation of facts, by the legal effect of his contract, and he is presumed to know that legal effect, and to intend it to have it. 1 Ind. Rep. 304.

Where a contract is made for any building, it becomes a law to the parties, and they are both bound by it, and whatever additions and alterations are made in such building, they form a new contract either express or implied, without affecting the original contract, and must be paid for, agreeably to such new contract.

A local usage cannot be considered a part of a contract when it contradicts that contract.

Contracts valid in the place where made, are valid everywhere, unless immoral, or contrary to public policy. Story Con. Law. 203.

So contracts void by the law of the land where made, are void everywhere. Remedies upon contracts and their incidents, are regulated and pursued according to the law of the place where the action is instituted.

PERFORMANCE OF A CONTRACT.—A mere readiness of the debtor to pay his debt, is not sufficient, he is bound to go to the creditor and tender it to him, in order to exonerate himself from liability.

When a contract is to be performed within a certain time after date, the day of the date is to be excluded.

A contract to complete a work by a particular time, means that it shall be done before that time.

An *entire* contract cannot be *apportioned*. If a party undertake to complete a certain act, which is entire and indivisible, before his claim to remuneration is to accrue, he cannot recover for a partial performance, although the completion of the act was prevented by inevitable accident. Thus, where a sailor was to be paid a certain sum if he proceeded and continued on a voyage, and he died before the voyage was completed, his executor could claim no part of his wages. So, if a landlord accept the surrender of a tenancy before the close of a quarter, he cannot recover any part of it. And so, if the tenant be *evicted* (compelled to leave the premises) before the close of the quarter, no rent can be recovered for the portion of the quarter in which he occupied. [See *Law of Tenancy*, in the "LANDLORD'S AND TENANT'S ASSISTANT," one of this series.

If a person is hired for six months, or other definite time, and leaves before the end of it, without reasonable cause, he loses his right to wages for the period he has served. But if he is dismissed without cause he can recover for the whole term. And it is no sufficient cause for his abandoning his contract, that he was put upon work not contemplated at the time the contract was made. But if he is prevented by sickness from laboring during the stipulated period, he may recover for his services as much as his services were worth, for the time he labored.

When a special contract is made to perform work, and furnish materials, and the work is done, and the materials are furnished, but not according to the stipulations in the contract, if the work and materials are of some value and benefit to the other contracting party, the first party may recover as much as his services and the materials were worth. 7 Pick 181.

A person who undertakes to perform a job of work by special contract, must perform his contract before he is entitled to his pay. 5 Johns. 85.

If in a contract for the sale of goods, no time be given for payment, the law implies a contract to pay for them on delivery.

If a person contract to do a thing on demand, or on notice, he will be entitled to a reasonable time in which to do the thing, after a demand made or notice given. 12 Mass. 121.

A contract for the hire and service of an agent, clerk, or servant, need not be in writing, unless by the terms of the bargain the employment is to extend beyond a year.

When a promisor undertakes to pay a certain number of dollars in specific articles, he must deliver the articles on the day named, or he will be bound to pay the sum stated in money.

RESCINDING. In general, a contract cannot be rescinded, unless by consent of both parties, except in case of fraud.

A party having a right to rescind a contract, must exercise the right within a reasonable time.

Where parties agree to rescind a sale once made and perfected without fraud, the same formalities of delivery, &c. are necessary to revest the property in the original vendor, which were necessary to pass it from him to the vendee.

TENDER. A tender should be unconditional, and of a certain and definite character. Where the defendant demanded a receipt, which the plaintiff refused to give, it was held that the defendant had lost all benefit of tender. 12 Mass. 450.

A tender does not bar, or extinguish the debt; for the debtor is still liable to pay it; but it bars the claim to subsequent damages, interest, and costs of defence against the plaintiff. A debtor should tender the full amount of the debt with the interest and costs which have accrued.

A tender of more money than is due is good for what is due.

A tender may be made by a third person, by debtor's desire, and on his behalf. It should be made in lawful coin; and it is always safe to produce and show the money.

A tender may also be made, after an action is brought on such contract, of the whole sum due thereon, *with the legal costs of suit incurred up to that time*, provided it be made within the requisite time before the return day of the original writ. The tender may be made to the plaintiff or his attorney, and if not accepted, the defendant may plead such tender at the trial, bringing into court the amount so tendered for the debt and costs. If the tender is accepted, the plaintiff or his attorney shall give to the defendant a certificate, or notice thereof to the officer who has the writ; and if any costs are incurred by the officer after the tender, and before he has notice thereof, the defendant must pay it.

If a debtor tender to his creditor a sum of money, in full of all legal claims, which the creditor may have against him on account, and the creditor receive the money, protesting that it is not sufficient, but saying that he will take it and pass it to the debtor's credit upon the account, and the debtor do not express any dissent to this course, the acceptance of the tender will be held no bar to the creditor's right to recover such sum as may be found due to him, exceeding the amount of the tender. 21 Ver. Rep., 222.

DAMAGES. The general rule of law respecting the measure of damages is, that where an injury has been sustained, for which the law gives a remedy, that remedy shall be commensurate with the injury sustained. 16 Pick. 194, 196.

The general rule of damages on all contracts to deliver goods on demand is the value of the property at the time of the demand. *Ibid.*

Where there has been a breach of contract without actual loss, the plaintiff is entitled to a judgment for nominal damages and costs. 7 Tenn. Rep. 575.

The measure of damages, in an action for a failure to convey land according to covenant, is the value of the land at the time the conveyance was to be made. 2 Scam. Ill. Rep. 344.

In an action by the assignee against the assignor of a promissory note, the measure of damages is the amount paid by the assignee. *Ibid.* 562.

Anticipated profits, or speculations in real property, cannot be recovered as damages for a breach of contract. 11 Ohio, 501. Actual expenditures under the contract may be recovered. *Ibid.*

When one contracts to employ another for a certain time, at a specified compensation, and discharges him without cause before the expiration of the time; he is in general bound to pay the full amount of wages for the whole time. 2 Denio's N. Y. Rep. 609.

But in a suit for the stipulated compensation, the defendant may show in diminution of damages, that after the plaintiff had been dismissed, he engaged in other business. *Ibid.*

Where the parties deviate from the terms of a special contract to perform work and labor, in an action for the work done, the contract price will, so far as applicable, generally be the rule of damages. 4 Comstock's N. Y. Rep. 338.

Where a party agreed to convey a certain tract of land for twelve hundred dollars, a part of which was paid down, and was to be received as part of the consideration-money, if such purchase was not completed, or of the damage, if the contract was not performed; and the party covenanted, if he did not conform to his agreement, he would pay five hundred dollars as a forfeiture. Held, that this sum was liquidated damages. 41 N. Hamp. 234.

On a covenant to convey real estate, as on a covenant of seizin, the measure of damages is, in the absence of fraud, the purchase-money and interest. 2 Blackf. 143.

The proper criterion of damages for failing to deliver property according to contract is, the value of such property at the time and place fixed for its delivery. 9 B. Monroe, 394.

The measure of damages in case of loss of goods by common carriers, is the wholesale price of the goods at the place where they were contracted to be delivered, deducting freight. 4 Blackf. R. 266.

In respect to *Liquidated Damages*. The courts will construe the amounts reserved as in the nature of a penalty, rather than as stipulated damages, though the sum reserved be called *liquidated* damages in the bond. 5 Met. 61.

In respect to *Penalties*. When a certain gross sum is reserved in an agreement, to be paid in case of the non-performance of such agreement, it is generally to be considered as a *penalty*, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the *actual damages* occasioned by the breach of the contract. Calling a sum *liquidated* damages will not change its character as a penalty, if upon the true construction of the instrument, it must be deemed to be a penalty. 2 Story on Contracts, 692.

It is difficult, in many cases, to distinguish between a penalty and liquidated damages. In general, the courts have inclined to consider the sum reserved by such agreement to be a penalty rather than liquidated damages. 2 Bouvier's Law Dictionary.

An unliquidated demand for damages is not a proper subject of set-off in an action at law. 1 Ind. Rep. 476.

AGENT. An agent signing *sealed* instruments in his own name, becomes personally responsible. But in contracts not under seal, if the agent intends to bind his principal and not himself, it will be sufficient if it appear in such contract that he acts as agent. The proper mode is to sign the name of his *principal* first, and then, underneath, his own name as *agent*, or *attorney*, thus:—A. B., by his attorney C. D.

When by negligence or unskilfulness of the agent, the principal derives no benefit from the acts of the latter, he is not entitled to any compensation.

An agent is not liable to his principal, for not accounting until demand, 24 Wend. 203, which demand should be made at his residence, and sufficient opportunity be given him for payment. 10 Ver. 474.

The authority of an agent may be created by writing or verbally. 4 Johns. Ch. R. 667.

The agency may be inferred from the relations of the parties, and nature of the employment, without proof of any express appointment. 15 East. R. 400.

If the agency is to transfer real estate, the appointment must be in writing. 6 Serg. & Rawl. 331.

A person whom a man puts in his place to transact his business of a particular kind, is a general agent; and such authority empowers the agent to bind the employer by all acts within the scope of his employment; and that power cannot be limited by any private order or direction, not known to the party dealing with the agent. 3 Blackf. 436.

One who, for his services, is to share in the profits, but not losses of an enterprise, and who acts only under employment, is an agent. 20 Ohio Rep. 144.

The principal may call his agent to an account at *any time*; and may recover full indemnity for all injuries sustained by reason of the positive misconduct or negligence of the agent, or by his transcending his authority. 12 Pick. 328.

ARTICLES OF AGREEMENT.

All agreements should, as far as practicable, be reduced to writing.

In all Contracts be careful that every thing demanded, or assented to, be fully and distinctly stated in the agreement; for when an agreement is reduced to writing, it is supposed to contain all the terms and conditions which the parties have agreed on.

When contracts are verbal or when written, and not under seal, they are termed simple contracts. One advantage of a Seal is, that the instrument, in many of the States, is not outlawed under twenty years.

1. Form of Agreement for Selling, Buying, Bartering, Manufacturing, or for any other purpose.

THIS AGREEMENT, made this — day of —, A. D. 185—, between A. B., of —, of the one part, and C. D., of —, of the other part, Witnesseth:

That the said A. B., for the consideration hereafter mentioned, promises and agrees to * [*here state the agreement, whether to build, make, sell, deliver, &c.*]

In consideration whereof, the said C. D. hereby agrees to pay to said A. B. [*here state the conditions, whether to pay in goods, cash, notes, &c.*]

[The following Obligation can be inserted or omitted. The law allows, in most cases, only for the actual damage sustained. See pp. 12 and 39.—It is a general rule that the delinquent shall answer for all the injury which results from the immediate and direct breach of his agreement; but not from any remote consequences.]

And it is further agreed between the parties hereto, that the party that shall fail to perform this agreement on his part, will pay to the other the sum of — dollars, as liquidated, fixed and settled damages.

In witness whereof, they have hereunto interchangeably set their hands and seals the day and year first above written.

Executed in presence of

A. B. {L. s.)
C. D. {L. s.)

* *If the agreement is to sell and deliver Wood, or other articles, say:—*

[sell to the said A. B. — cords of seasoned hickory, (or maple, white oak, beech, birch, &c., as the case may be,) wood, and to deliver and securely pile the same on the wharf of the said C. D., in —, on or before the — day of — next.]

If the Contract is to make shoes, &c., say:—

[make and deliver to the said C. D., within — days from the date of this contract, two hundred pairs of shoes, of the same quality of leather, goodness of workmanship, and size, and in all respects according to the pattern or sample agreed on by the parties, on which both of the parties have written their names with the date of this agreement, and which sample is in the hands of the said C. D.]

If to sell a horse, say:—

[sell to the said C. D. his black mare, known as black Fanny, 7 years old, weighing about 900 lbs., and to warrant said mare to be sound, and kind in all harness, to ride easy, and as a ladies' saddle horse.]

If to sell animals, say:—

[sell and deliver to C. D. on the — day of — next, at his house in —, one yoke of three year old oxen.]

2. *Agreement to submit to Arbitration.**

KNOW ALL MEN BY THESE PRESENTS, That A. B. of —, in the county of — and commonwealth [or, state] of —, and the — Fire Insurance Company, a Corporation by law duly established in —, in the county of — and commonwealth [or, state] of —, have agreed to submit the demand, which the said A. B. has against the said Company upon a certain policy of Insurance against fire, made by the said Company in favor of the said A. B., (a true copy of which Policy is hereunto annexed) to the determination of D. E. F., G. H. I. & K. L., of —, the award of whom, or the greater part of whom, being made and reported within — days from this day to the Court of — for the county of —, the judgment thereon shall be final: and if either party shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence.

Dated this — day of — A. D. 185—. A. B., Party Insured.
Signed, sealed and delivered in presence of C. D. Pres. Ins. Co.

* If the dispute is between individuals say:—KNOW ALL MEN, That A. B. of —, and C. D. of —, have agreed to submit the demand which the said A. B. has against the said C. D., which is hereto annexed, (or, and all other demands between said parties,—or the submission may be varied in this respect) to the determination &c. — See Awards and Bond at pp. 24, 29.

3. *Agreement for the Sale of Real Estate.*

[Every Agreement for the sale of real estate must be in writing. If it be the intention of the parties that a simple warranty deed or quit claim only be given, it should be so stated in the agreement.]

ARTICLES OF AGREEMENT made between A. B., of —, and C. D., of —, as follows:—

The said A. B., for the consideration hereafter mentioned, doth covenant and agree to convey to said C. D. in fee, all that lot of land, situate in M., [give description, boundaries, &c.] by a warranty deed in common form, with a good title, and a release of dower of the wife of said A. B., on or before the — day of — next.

In consideration whereof, the said C. D. doth agree to pay said A. B. the sum of two thousand dollars in the manner following:—one thousand dollars in money on delivery of the deed, and one thousand dollars in a negotiable note, payable to said A. B. in two years, with interest semi-annually, secured by a mortgage of said premises, to be made by said C. D. to said A. B., as collateral security for the payment of said note.

Witness our hands and seals this — day of —, A. D. 185—.

Signed, sealed, and delivered in presence of

A. B. (L. s.)
C. D. (L. s.)

[May be acknowledged and recorded]

4. *Agreement for the Sale of Flour, &c.*

ARTICLES OF AGREEMENT made between A. B. of —, and C. D. of —, as follows:—

The said A. B. agrees to sell and deliver to said C. D., at his store

in C., on or before the — day of — next, one hundred barrels of [*flour, pork, beef, wheat, corn, potatoes, cider, rum,* or any other article], warranted to be [*here state the quality, &c.*]

In consideration whereof, the said C. D. agrees to pay said A. B., — dollars in full for said flour, in four months from such delivery.

Witness our hands and seals this — day of —, 185—.

In presence of

A. B. (L. s.)
C. D. (L. s.)

5. *Agreement with a Clerk, or Workman.*

IT IS AGREED by A. B. and C. D., doth of D., as follows:—

The said A. B. has agreed to enter the service of the said C. D. as a Journeyman [*or Clerk,*] and promises faithfully, honestly and diligently to give and devote to him his time and labor as aforesaid, for the space of — year, from the first day of January next.

In consideration whereof, the said C. D. agrees to allow, and pay to the said A. B., the sum of — dollars per annum, payable in monthly payments of — dollars each.

But, if the said A. B. shall fall sick, or be absent from the factory [*or, shop*] of the said C. D., when he has employment for him, then such absent time shall be deducted, allowed for, and made up to the said C. D.

Witness our hands &c.

A. B. (L. s.)
C. D. (L. s.)

In presence of

6. *Landlord's Agreement of Lease.*

I have this — day of —, 18—, let to C. D. my house and lot, known as No. — in — street, in the city of —, with the appurtenances, and the sole and uninterrupted use and occupation thereof, for one year, to commence the — day of — next, at the yearly rent of — dollars, payable quarterly, on the usual quarter days. Rent to cease in case the premises are destroyed by fire.

A. B.

7. *Tenant's Agreement of Lease.*

I have hired and taken from A. B. his house and lot, known as No. — in — street in the city of —, with the appurtenances, for the term of two years, to commence the first day of — next, at the yearly rent of — dollars, payable quarterly, on the usual quarter days. And I hereby promise to pay said rent in manner aforesaid; and to quit and surrender the premises, at the expiration of the term, in good condition, reasonable use, fire and other casualties excepted. In case said house shall be destroyed or rendered unfit for its accustomed uses by fire or other unavoidable casualty, during said term, thereupon this agreement shall be ended.

Witness my hand and seal this — day of —, 185—.

In presence of

C. D. (L. s.)

NOTE.—See Forms of Leases, and Landlords' and Tenants' Notices to terminate tenancy, and Notice to Tenant to Quit for non-payment of Rent, at pages 48, 49. Also, see "*The Landlord's and Tenant's Assistant*" for various forms of Leases, peculiar and special Covenants, and the *Laws* in relation to Hiring Houses, Stores, Farms, &c.; and the Liabilities of parties.

Forms of Agreements, &c., for Builders.

No. 1.

I hereby agree to execute the whole of the works requisite to be done in the (erection, enlargement, or alteration, as the case may be), as detailed in the drawings and specification, for the sum of — dollars, and to complete and finish the same, according to the conditions before specified, and to the satisfaction of the architect, on or before the — day of — next, or to forfeit the sum of — per week, for every week the works may be delayed beyond that date. *

Dated this — day of — 185—.

E. F.

No. 2.

THIS INDENTURE WITNESSES, That A. B. of W., and C. D. of X., agree as follows:—

The said C. D., for the consideration hereafter mentioned, agrees to build and complete for said A. B., a three story brick store on lot No —, Long Wharf, in the town of B., in accordance with the plans and specification signed by the parties; to provide all necessary materials for constructing the same; and the work to be done in a faithful and workmanlike manner, within six months from the date hereof.

In consideration whereof, the said A. B. agrees to pay to said C. D. — dollars, as follows: [here state the sums and times of payment.]

Witness our hands and seals this — day of —, 185—.

A. B. (L. s.)
C. D. (L. s.)

Signed, sealed and delivered in presence of

No. 3.

THIS AGREEMENT, made this — day of —, one thousand eight hundred and —, between A. B., of —, merchant, and C. D., of said —, housebuilder—Witnesseth,

That in consideration of the mutual promises herein contained, the parties hereto agree as follows:

Said D. will provide the materials for, forthwith commence, and build without delay or intermission, except from necessities of weather, a house for said B. on his lot in — street, in —, according to plans and specifications, drawn by E. F., architect, to be signed by the parties hereto; and deliver said house, completely finished in every respect, ready for occupation, to said B., on or before the — day of — next.

No departures from the plans and specifications shall be made, unless assented to in writing by said B. If any departures are otherwise made, said B. may require said D. to take down the work, and do it over again in the manner provided; and if said D. shall neglect or refuse so to do, said B. may have it done by other persons at said D.'s expense.

Whereas, said B. is to employ a superintendent of the work, it is expressly understood that he does so for his own convenience and security, and that said B. is not to be affected or bound by any act, agreement, admission, waiver, or acceptance by said superintendent, express or implied.

Said B. may at any time require, in writing, alterations in said plans and specifications, in which case said D. shall have reasonable additional time for finishing said house, to be fixed by said F.; and if the alterations require a change in the price, such change of price, if not specified in the writing, shall be left to the decision of said F.

If the work is not prosecuted in the manner set forth in this Contract, as to either time, or quality, or manner of work, or materials, said B. may dismiss said D. and employ other persons to complete the house, and deduct from the amount contracted to be paid said D., the expense thereof, and all damages caused by said D.'s default, and recover the surplus, if any, from said D.

And said B. agrees to pay said D. the sum of — dollars, in full for his work and materials, in instalments, as follows: — dollars when the frame of the house is erected; — dollars when it is roofed and finished on the outside; — dollars when the house is completed and ready for occupation; and the balance in three months therefrom.

If said B. shall see fit to accept said house, or any part of the work, with defects or departures from the Contract, without requiring the same to be changed, he may still deduct any damage sustained thereby. And it is also understood that said B.'s entering into and occupying said house, shall not debar him from objections to said D.'s performance of the Contract.

In witness whereof the parties have hereunto set their hands and seals, the day and year first above written.

A. B. (L. s.)

Signed, sealed and delivered in presence of

C. D. (L. s.)

Specification for the Construction of a Cottage.

[Specifications for the construction of buildings are various. The following is a Specification of Material and Labor for the construction of a frame dwelling-house, built under contract for \$1400.]

Drawings.—The drawings referred to herein are to be considered as illustrating and forming part of this Specification.

Dimensions.—Dimensions are to be taken from the figures upon the drawings, or where they are wanting from measurements of the drawing, upon the largest scale shown.

Outside Measure, 23 by 26; L 8 by 15. First floor to contain a Parlor 12 by 15, Sitting-room 12 by 13½, Kitchen 10½ by 12½, Hall 7½ feet wide. Second floor to contain three Chambers 12 by 15, 11 by 13½, 10½ by 9, and a Bed-room 7½ by 8. The first story to be 9 feet high; and the second story 8 feet 3 inches in the clear.

Excavation.—The ground line on the plans represents the height of the earth at the completion of the work. Cellars to be dug 5 and 6 inches below the ground line, under such parts of the house as may be agreed upon; the bottoms to be leveled, graveled and rammed. Trenches for walls to be dug at least 8 inches, with bottoms even and hard. Superfluous earth, stone, and rubbish, accumulated during the work, to be removed to such place as directed by the owner or his agent not to exceed over 500 feet haul. Soil to be

deposited by itself and replaced when the grounds are graded and leveled, as agreed upon; and the lot left in a neat condition.

MASON'S WORK.

Foundations.—The foundation walls to be of the dimensions and thicknesses as shown in the plan, and built in such a position upon the lot as the owner may direct. Footing stones, firmly laid, to extend through the wall. The walls, chimney and veranda piers to be of hard, broken stone, solidly laid on flat surfaces, in lime mortar, thoroughly bound, built plumb, neatly pointed where in sight, and finished true and level at the top. Veranda piers to be 4 feet below surface. Cellar window frames to be built in, secure and tight. Openings in the cellar walls, required for passages, to be made with well laid jambs.

Chimneys.—The chimneys, of the sizes as shown on the plan, are to start from stone foundations, and run up straight. The flues to be laid smooth and pargeted. A sheet iron thimble with cover to be inserted in each room. All bricks to be of good quality, and those used in top to be hard burnt and smooth. Wood is not to be introduced into any part of the chimney.

Filling in, &c.—The whole thickness of the walls 6 inches high from the sills, to be filled in with brick or broken stones and mortar, so as to exclude air and mice; crevices under the sills to be well pointed.

Lathing.—The plastered walls to be lathed with good pine laths four feet in length, and each lath nailed with four nails; heading joints to alternate.

Plastering.—Inside walls, except in cellar, to be plastered and finished with skim coat, the plastering to be made even and true with the grounds, and to form a solid connection with the filling in at the floor.

Whitewashing.—The cellar walls, framing, and floor above, to be whitewashed with two coats.

Materials, &c.—Lime, sand and hair to be of good quality, well mixed, and worked up, and the mason work to be done in a workmanlike and thorough manner. No injury is to be done to the woodwork by the mason or the persons he employs; and all defects must be repaired after the carpenter's work is done.

CARPENTER'S WORK.

Frame.—The sills 4 by 6 to be laid firm, square and level on foundation walls; posts 4 by 5 to be tenoned $1\frac{1}{2}$ inches into the sills and tenoned into the plate, and placed accurately; tie beams 4 by 5 to be tenoned into the posts; plates 4 by 4 halved at angles and pinned; braces 3 by 4; window and door posts 3 by 4 to be tenoned in; girders 4 by 6 will be placed where shown in the drawing; floor beams $1\frac{1}{2}$ by 8 for first tier to be level with the sills, and framed as shown in the drawing; those of the second tier of same size to rest on the tie beams and on the central partitions, where they will lap by, and be nailed to each other; partitions to have 3 by 4 heads and sills; where one partition is directly under another, its head will make the sill of the one above; inside door posts 3 by 4 and studding 2 by 4 placed 16 inches on centres to be well nailed at top and bottom; outside studding 2 by 4 to be well nailed at top and bottom;

rafters 2 by 5 placed not over 20 inches on centres and bridged if required; trimmers to be framed around the chimneys. The frame is to be securely stayed to keep it true and plumb while unfinished. All timber to be of Hemlock, sound, straight and true, and of the sizes specified, and put together in a firm and workmanlike manner.

Roofs.—The roof to be covered with 1 inch Hemlock boards, of uniform thickness, laid with close joints, and well nailed to the rafters. Gutters are to be formed in wood, as shown on the section; placed and made to carry water where directed. Roof of main house to be overlaid with best of Bangor sawed pine shingles, laid one-third to the weather, in the best manner. Veranda roof to be covered with cotton drill, closely tacked down, and immediately painted.

Boarding.—Outside walls to be covered with good Hemlock boards of uniform thickness, overlaid with good sap clear pine clapboards, mill planed to even thickness.

Floors.—Double floors throughout the house, nailed with two nails to each beam, and planed level and smooth. Veranda floors $1\frac{1}{4}$ in. thick, narrow, sloped 1 inch to the outside, worked with a nosing, as shown in drawing, and laid in white lead.

Inside Trimmings.—Base boards as follows: in the first story 7 inches high and 1 inch thick, with moulding; in second story and closets 5 inches high, plain. The casings of doors in closets to be 3 inches wide, plain; all others as shown in drawing. Door jambs 2 inches thick and rebated.

Outside Trimmings.—All cornices, &c., to be like the drawings, solid, and well secured.

Grounds to be provided to receive inside trimmings, and no trimmings will be put in till the plastering has hardened.

Stairs—Cellar stairs to be provided with 1 inch risers and 1 inch treads; main stairs same, supported on three carriages, to have moulded nosings.

Doors—Inside doors on first floor to be 2 ft. 10 in. by 6 ft. 10 in. and $1\frac{1}{2}$ inches thick. Chamber doors 2 ft. 8 in. by 6 ft. 8 in. and $1\frac{1}{2}$ inches thick. All to be four paneled with moulding. Front door as shown in drawings.

Windows.—The frames of cellar windows to be $1\frac{1}{4}$ inches jambs and straight soffits, and 2 inch sills rebated to receive the sash, and set close under the sills where directed; the sashes to be hung with bolts at the upper edge, provided with buttons to hold them closed, and to have three lights; all others are to be like drawings—double hung, with cords, pulleys and weights. *

Closets.—Closets to be finished with hanging strips and hooks as required; and 60 feet of plain shelving is to be placed where directed.

Door Bell.—A bell is to be hung in the kitchen connected with a pull at the front door.

Materials.—All the lumber which is to show when finished is to be of good, clear, sound, and well seasoned white pine, worked and put up in a workmanlike manner. All hard ware and furnishings needed to make the house complete, are to be fitted in a proper manner.

HARD WARE.

The outside door to be hung with three pair of butts; all others with two pair each, of good manufacture and proper size. Hemp

cord of good quality, axle pulleys, weights of a size to balance the sash and to run easily in the boxes, to be furnished for each window. The first story windows to have sash fastenings of a pattern to be approved by the owner not to cost over — dollars per dozen. All doors to be fitted with mortice locks and latches, half each. All door knobs to be dark mineral. All nails, spikes, screws, &c. needed, to be of the proper size and best quality.

Leaders.—There will be two 3 inch tin leaders connected with the gutters, to be neatly and securely attached to the house, and made tight; two 2 inch leaders will connect with the veranda gutters at their junction with the house.

PAINTING, &C.

The sashes to be glazed with first quality German window glass, well bradded, puttied and back puttied. All outside wood work to be primed as soon as put up. All the outside and inside wood work, except inside floors, will be properly puttied, and painted two coats of pure white lead and linseed oil, and colored as directed.

GENERAL CLAUSES.

All the materials are to be furnished, and the work done, necessary to complete the house, according to the drawings, though the same may not be specially mentioned herein. The work and materials, not otherwise specified, are to be of the best qualities of their several kinds. The contractor must guard against any injury to trees or fences about the house; he must not employ incompetent or improper persons about the work; and he is to remove all dirt and rubbish from the premises, and deliver the same finished and in a neat condition in every respect.

Alterations.—All alterations and deviations from this Specification, and all additions to the same, are to be fully stated in writing and appended hereto.

Tenders for Work. Forms of.

No. 1.

SIR,—I hereby propose to execute the works required to be done in the (*erection, alteration, or enlargement, as the case may be,*) in conformity with, and to the true intent and meaning of the drawings and specification of the same, for the sum of — dollars.

Dated this — day of —, A. D. 185—.

A. B.

No. 2.

SIR,—I have examined the specification and drawings of the works intended to be done in the erection of (*as the case may be*) situate, and being No. — and hereby offer to execute the same in a good and workmanlike manner, agreeable to the true intent and meaning of the said specification and drawings, and to the satisfaction of the architect, for the sum of — dollars.

Dated this — day of —, 185—.

C. D.

NOTE.—See Laws relating to Division Fences, Party Walls, Ancient Lights, Highways, Private Ways, Running Water, Nuisances, Prescriptive Rights, &c. in "*The Landlord's and Tenant's Assistant*," pages 53 to 67.

Notice of intention to Build, and requesting Grade of Street.

To the Hon. the Mayor and Aldermen of the City of —, [or Selectmen of the Town of —]

GENTLEMEN,—The undersigned hereby gives notice of his intention to erect a building on — Street, and respectfully requests that the grade and line of said street may be given him; with permission to occupy such portion of the street in front of the premises, as may be necessary for the deposit of building materials.

B—, J— 10, 1858.

A. B.

NOTE.—See “Agreements of Charter Party,” &c. in “*The Merchant’s Assistant and Common Carrier’s Guide.*”

MARRIAGE CONTRACT.

Persons authorized to perform this ceremony should, when parties present themselves before them for its performance, be satisfied that they have a legal right to marry.

When performed by a minister, or priest, it should be according to the forms and customs of the church to which he belongs. If by a magistrate, no particular form is requisite. The following Form may be used by either.

FORM OF MARRIAGE.

The justice, or minister, may say :

J. S., do you take M. B. to be your wife? Do you promise to be to her a kind and faithful husband, so long as you both live?

To which the man answers, “I do;” or otherwise assents.

The justice, or minister, may then address the woman :

M. B., do you take J. S. to be your husband? Do you promise to be to him a kind and faithful wife, so long as you both live?

To which she answers, “I do;” or otherwise assents.

The justice, or minister, may then declare them lawfully married.

The minister, or magistrate performing the ceremony should ascertain the christian and surnames of the parties, their ages, residences, and conditions, (whether single or widowed). These he should enter in a book, and also the date of the marriage, his own name, residence, and official station; and a record or certificate of the marriage should also be filed with the Clerk of the city or town, in which the marriage is solemnized.

MARRIAGE CERTIFICATE.

Mr. *John Smith* of W. and Miss [Mrs.] *Mary Brown* of W., were joined in marriage at B. by me, this *tenth* day of October, 185—.

G. P., *Justice of the Peace.*

In Massachusetts, the Clergyman or Magistrate solemnizing the marriage of the above described parties, is requested to fill out the above Certificate and return a certified copy thereof, to the Clerk or Registrar of the City or Town in which it may have been solemnized, on or before the tenth day of the following month, according to law.

APPRENTICE. INDENTURE OF.

Duplicate copies of this Indenture should be made, one for the master, and the other for the apprentice, his parent, or guardian. On the death of the master the apprenticeship is dissolved. The master is liable for necessities furnished the apprentice, and also for medical attendance. If an apprentice leave his master, without his consent, the master can maintain an action for his earnings against the person who shall employ him, after demand.

If an apprentice should be guilty of improper conduct, the master may, legally, be discharged from the contract. The services of the apprentice cannot be assigned; nor, if his master leaves the state, is he obliged to go with him.

Form of Indenture of Apprentice.

THIS INDENTURE, made this — day of —, in the year 185—, by and between A. B., of —, in the county of —, ship carpenter, and C. D., of —, in the county of —, mason, witnesseth:

That the said A. B., in consideration of the covenants and agreements of the said C. D., hereinafter set forth and described, and in accordance with the consent and wishes of his son S., of the age of — years, who hereby signifies his assent by subscribing this indenture, doth intrust, bind, and hereby indent the said S. to the said C. D., to learn the art and trade of [here describe the particular trade or business] and with him, as an apprentice, to serve from the day of the date of this indenture, until the — day of —, in the year 185—, at which time the said S. will arrive at the age of twenty-one years.

And the said A. B., doth covenant with the said C. D., that for and during the term aforesaid, the said S. shall well, truly and faithfully serve him, and shall give and devote to him his time and labor; that he shall not destroy or injure the property of the said C. D., but shall endeavor to advance the interest and benefit of his business, and shall conduct himself in a temperate, honest and industrious manner.

And the said C. D., doth hereby covenant with the said A. B., that he will truly and faithfully instruct and teach the said S., in the art and trade aforesaid, to the best of his knowledge and skill, and as far and fast as the said S. may show himself disposed and capable of learning the same; that he will, during the term aforesaid, supply him with good and suitable food, lodging and clothing, and all things necessary in sickness and in health, and teach him habits of industry and good morals.

And the said C. D. further covenants with the said A. B., that he will pay to the said S. the following sums of money; for the first year of his service, — dollars; for the second year of his service, — dollars; and for every subsequent year till he shall arrive at the age of twenty-one years, — dollars, the said sums to be paid annually on the first day of January.

And the said S. hereby signifies his assent to the terms and covenants in this indenture, and promises to keep and perform the same on his part. — In witness whereof, we have hereunto set our hands and seals, on the day and year first above written.

A. B. (L. s.)
C. D. (L. s.)
S. B. (L. s.)

Executed in presence of

A S S I G N M E N T S .

The assignment of an instrument must be of as high a nature as the instrument itself. A deed can be assigned only by a deed.

An assignment of real estate should be acknowledged and recorded. — Assignments of claims and debts, not negotiable, give the assignee no right to bring suit in his own name, but he may sue in the name of the assignor. — In general the assignee of a chose in action takes it subject to all the equity which existed between the original parties.

No formality is necessary to effect the assignment of a chose in action. A debt may be assigned by parol as well as by writing. When a debt secured by mortgage is so assigned, and the mortgage-deed delivered to the assignee he becomes invested with all the equitable rights of the mortgagee. — *2 Story's Equity*, 311. The mere delivery of a bond, covenant, note, account, or other claim, for a valuable consideration is a valid assignment, if such delivery was intended by the parties as a transfer. — *17 Johns.* 284; *13 Mass.* 304.

1. *Assignment to be written on the back of a Bond, Covenant, Agreement, Bill of Sale, or other Instrument.*

KNOW ALL MEN BY THESE PRESENTS, That I, the within named A. B., in consideration of — dollars to me paid by C. D., of —, do hereby assign to said C. D. the within written instrument, and all my interest in the covenants and agreements therein contained.

The following Power of Attorney may be added if required :

[And I constitute the said C. D. my attorney, irrevocable, with full power at his own charge, in my name, to take all legal measures which may be necessary or proper, for the recovery and enjoyment of the assigned premises, with power of substitution.]

Witness my hand and seal this — day of —, A. D. 185—.

Executed in presence of

A. B. (L. s.)

2. *Assignment of a Lease, by Indorsement.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., within named, in consideration of — dollars, to me paid by C. D., of, &c., do hereby grant and assign to C. D., the lease within written, and all my estate and interest in and to the premises thereby demised. To have and to hold the said premises to the said C. D., for the residue of the term within mentioned, under the yearly rent and covenants within reserved and contained, on my part and behalf to be done, kept and performed.

Witness my hand and seal this — day of —, A. D. 185—.

Executed in presence of

A. B. (L. s.)

3. *Assignment, to be indorsed on the back of Mortgage.*

IN CONSIDERATION of — dollars, to me paid by C. D. of —, I, the within named A. B., do hereby grant and assign to said C. D. the within mortgage deed, the estate therein mentioned, and the promissory note and debt thereby secured; subject, nevertheless, to the conditions therein contained, and to redemption according to law.

Witness my hand and seal this — day of —, 185—.

In presence of

A. B. (L. s.)

[To be acknowledged and recorded.]

4. *Deed of Assignment of Mortgage.*

KNOW ALL MEN BY THESE PRESENTS, That, I, A. B., the mortgagee named in a certain mortgage deed given by E. F. to said A. B. to secure the payment of — dollars; dated —, recorded in — Registry of Deeds, Lib. —, Fol. —, in consideration of the sum of — dollars, to me paid by C. D., of —, in the county of —, (the receipt of which is hereby acknowledged) do hereby grant and assign unto the said C. D., his heirs and assigns, the said mortgage deed, the estate therein mentioned,* and the promissory note and debt thereby secured.

To have and to hold the same unto the said C. D., his heirs and assigns, to his and their use and benefit forever, but without recourse to me, or my heirs, executors, or administrators, in any event whatever.

Witness my hand and seal, the — day of —, 185—.

Executed in presence of

A. B. (L. s.)

* NOTE. — If an executor or administrator assign a mortgage, insert after the word "mentioned" "which the said A. B. had at the time of his decease, and which I have as executor aforesaid."

[To be Acknowledged and Recorded.]

5. *Assignment of a Bond, where Assignor is liable.*

For value received, I do assign and set over the within obligation and all money due thereon, unto A. B., hereby guaranteeing the payment thereof, in case of default being made by the within named C. D. Witness my hand and seal, &c.

In presence of

E. F. (L. s.)

6. *Another, where the Assignor is not liable.*

For value received, I do assign and set over the within obligation, and all money due thereon, unto A. B., not holding myself liable for the payment of the same; the losses, if any, and the recovery thereof to be wholly at the risk of the said A. B.

Witness my hand and seal, &c.

In presence of

E. F. (L. s.)

7. *Short Form of an Assignment of a Bond or Bill.*

For value received, I hereby assign all my right, title, claim, interest, property, and demand whatsoever, in and to the within bill, unto C. D. Witness my hand and seal, &c.

In presence of

A. B. (L. s.)

8. *Assignment written on the back of an Insurance Policy.*

MARCH 13th, 185—. For value received, I hereby assign all my right and interest in the within Policy, to C. D.

Approved, A. W., President.

A. B. (L. s.)

9. *Assignment of Wages now Due, and to become Due.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in consideration of — dollars, to me paid by C. D. of —, do hereby grant, sell and assign to said C. D. all claims and demands

which I now have, or which I may have against E. F., of —, [or, the town, or city of —], on the first day of July next, for all sums of money due, and to become due to me from said E. F., [or, to become due to me for services in the Fire Department of the town, or, city of —]; with full power, in my name, at his own costs, to collect, receive, discharge, or assign the same.

Witness my hand and seal, &c.

In presence of

A. B. (L. s.)

10. Assignment of all Claims against Debtor.

KNOW ALL MEN BY THESE PRESENTS, That I, (or we,) [here insert the names of the subscribers,] of —, in the county of —, and State of —, in consideration of having received of E. F., of —, in the county of —, and State of —, Manufacturer, thirty per cent, of all [my, or, our] claims against the said E. F., in said —, [which are not protected or secured by mortgage on the property of the said E. F., or otherwise,] a schedule of which claims belonging to — is hereto annexed, marked [A,] do hereby sell, transfer, and assign unto the said E. F., all right, title and interest in and to said claims and demands against the said E. F., which are enumerated and described in the said schedule.

In testimony whereof, we have hereunto set our hands, &c.

In presence of

Signatures and Seals.

11. Assignment of Interest in Land for a Term of Years.

KNOW ALL MEN BY THESE PRESENTS, That A. B., of —, in the county of —, bookseller, in consideration of — dollars to him paid by S. H., of —, mason, the receipt whereof is hereby acknowledged, doth hereby sell and assign unto the said S. H., one undivided third part of a certain dwelling house on — street, in said —, with the land under and adjoining the same, and the privileges and appurtenances thereto belonging. The said dwelling house being the same formerly owned by E. M. C., late of said —, deceased, and by his last will and testament devised to E. A. and others; the said premises being subject to certain leases to the present tenants thereof.

To have and to hold, the above-granted premises to the said S. H. his heirs, executors, administrators and assigns, for and during the term of — years, from the — day of —, eighteen hundred and —, if the said A. B. shall so long live.

And the said A. B. does hereby grant to the said S. H., full power and authority to receive the rents and profits of the above-granted premises, and in his name or otherwise to give full discharge therefor. In witness whereof, the said A. B. has hereto set, &c.

Signed, sealed and delivered in presence of

A. B. [L. s.]

The above assignment may be made to obtain a loan, or to prevent attachment, but in the latter case the consideration actually paid must be such as to prevent a charge of fraud.

12. Assignment of Debtor for the Benefit of Creditors.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in consideration of one dollar to me paid by E. F., of —, and of

the trusts herein expressed, do hereby convey and assign to said E. F., all my estate, real and personal, excepting such parts thereof as have been, or shall be left in my hands, as being by law exempted from attachment: with all my deeds, books and papers relating thereto,—a schedule of the principal part of which property is hereto annexed.

TO HAVE AND TO HOLD, all the above granted premises to the said E. F., his heirs and assigns, *in trust*, to sell and dispose of said property on such terms as he may think best for the interest of all concerned; and collect and convert into money all the debts and demands, or so much thereof as may prove collectable; and after deducting from the proceeds of said property, the expenses incurred by said E. F., in transacting the business, and a reasonable compensation for his services, to divide and pay the residue of said proceeds among all the creditors of A. B., who shall become parties hereto within — days from the date hereof, in equal proportion to their respective claims.

E. F., agrees to execute said trusts, being responsible only for his actual receipts, or wilful defaults. And the creditors whose names are subscribed, agree to said assignment, and that this instrument shall be a release in full of all their claims, whenever their just proportion of the proceeds of said property shall be paid.

Witness our hands and seals this — day of —, &c.

Executed in presence of

A. B. (L. s.)

E. F. (L. s.) &c.

[To be recorded when real estate is included.]

In some States no preference of one class of creditors over another is allowed; in others, a debtor may legally prefer one or more creditors.

FORMS OF AWARDS.

Award, or arbitration, is an amicable, and generally expeditious and cheap method of adjusting controversies and litigations, when the parties can agree to submit the subjects in dispute to one or more persons chosen by themselves. Their agreement to submit is termed the submission. Except in matters of trifling importance, it should be in *writing*, and may be by *bond*, or by a *rule of Court*. It should name the arbitrators, should define the subjects of controversy, limit the time of making the award, and clearly state all the agreement of the parties. It may authorize two or more arbitrators to choose another, or to choose an umpire in case of difference. If the submission does not otherwise provide, all the arbitrators must be present at the hearing, and must agree to the award. If the submission be in writing, the award should also be in writing. The proceedings at the hearing, and the award itself, should perfectly agree with the terms of the submission. The award should be a clear, distinct and final determination of each and all the matters of controversy contained in the submission, and should embrace nothing more.

If it be a rule of Court, it should be sealed up and returned to Court, otherwise copies should be given to each party. Arbitration Bonds should be in common form. [See Bond of Arbitration, page 30.]

1. Award by Referees.

WE, THE UNDERSIGNED referees appointed by the within rule of Court, [or, *by a bond or agreement of submission*] dated the — day of —, having notified and met the parties, and heard their

several allegations, proofs, and arguments, and having duly considered the same, do award and determine, that the said A. B. shall recover of the said E. F. — dollars, [together with costs of Court, to be taxed by the Court,] and the costs of this reference, which amount to — dollars, and that the same shall be in full of all matters referred to us.*

Dated at — this — day of —, A. D. 185—.

G. H. }
I. K. } *Referees.*
L. N. }

* Should there be three referees and only two agree, then say "a major part of the referees, appointed by the within Agreement [see Agreement of Submission at p. 14] of Submission, L. N. the other referee, who has not signed the award, having been present at the hearing";— and it should be signed, G. H., I. K., a major part of the referees.

2. *Award by Referees for Valuation of Land.*

WE THE UNDERSIGNED, appointed by the —, to view and assess the damage sustained by the petitioners, A. B. and E. F. by reason of — do hereby report: That we have viewed the lots of land taken up by the road mentioned in said petition, and do value and adjudge the damage thereby occasioned, to the said A. B. at the sum of — dollars, and to the said E. F. at the sum of — dollars, respectively. Dated this — day of —, A. D. 185—.

G. H. }
I. K. } *Referees.*

3. *Award by Referees.*

[Direction.]

To the Court of — for the County of — State of —, [or, To the — Insurance Company and A. B., of —, in the State of —]:

The within is the Award of D. E. F., G. H. I. & K. L., Referees to Assess the Loss or damage by fire on Mr. A. B.'s house, No. 1 — street.

Agreement.

—, ss. B—, Nov. 3, 185—. We the subscribers individually agree to open the within Award, and to abide by the decision of it, the same as if opened in Court.

C. D., Pres't of — Ins. Co.
A. B., Party Insured.

Witness,

Award.

WE THE UNDERSIGNED, Referees, appointed by the within agreement of Submission, having notified and met the parties, and heard their several allegations, proofs and arguments, and duly considered the same, do award and determine, that the within named A. B. shall recover of the said — Fire [or *Marine*] Insurance Company, the sum of — dollars, in full of all demands, under the annexed Policy of Insurance, together with the costs of this reference, which amount to — dollars.

Dated at —, and signed as in No. 1.

BILLS OF SALE.

A Bill of Sale is a contract, by which one person, for a valuable consideration, transfers the right and interest which he has in goods or chattels.

Delivery must be accompanied by *acceptance* on the part of the purchaser; so, where one ordered several articles in a shop, some of which he marked with a pencil, while others were measured in his presence, and in pursuance of his directions were sent to his house, but he refused to receive them, it was no sale. 4 M. & S 262. Delivery to an agent, or carrier, if with the purchaser's consent, is sufficient. Earnest will also bind the bargain, but it must consist of the giving away of something valuable; and not a mere ceremony.

On a contract of sale of goods, the general rule is, that the delivery is to be at the place where the vendor has the article; but in a contract to pay a debt at another time, in such articles, they must be delivered at the creditor's place of residence. 2 Kent, 505, 5 ed.

It is a general rule that the employer will be bound by the warranty of his clerk or shopman, if acting within the scope of his authority.

If the vendor of goods make any assertion respecting the kind, quality, or condition of the article upon which he intends the vendee should rely as a fact, and upon which he does rely, that is a warranty. (9 N. H. 111.)

Warranty must be upon the sale; if it be made after, it is void for want of consideration

In some States a voluntary sale of goods, the seller retaining possession of the goods after the sale, is evidence of fraud, in others only *prima facie*.

Where possession is to be retained by the seller, he should take a lease of the goods from the buyer.

The reader will find the laws relating to SALES and WARRANTIES given more fully in "The Trader's Guide," pages 53 to 58.

Bill of Sale of Goods, under Seal.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. of G., in the county of G, in consideration of — dollars, to me paid by E. F. of G., do hereby grant, sell, and deliver to said E. F., the following personal property, viz: [*here insert a schedule of the articles*]; warranted free of any incumbrance, and against any adverse claims.

Witness my hand and seal, this — day of —, 185—.

Executed in presence of

A. B. [L. s.]

A Bill of Sale by two Merchants, partners, to a third of their whole interest in a Store.

[*Insert in the above form the following description,*] "All the stock in trade, goods, wares, merchandise, book-accounts, notes, bills, drafts, choses-in-actions, and other property of said firm."

Bill of Sale of a Horse, with Warranty.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. of E., in the county of E., in consideration of — dollars, to me paid by C. D., of E., do hereby sell and convey to said C. D. one dark bay horse, with grey fore-fetlocks.

And I do hereby warrant said horse to be of the Black Hawk breed of horses, eight years old, sound in every respect, free from vice, well-broken, kind and gentle in single and in double harness, and under the saddle, and to be free from incumbrance and against any adverse claims. Witness my hand and seal, this — day of &c.

Executed in presence of

A. B. [L. s.]

Bill of Sale, not under Seal.

BOSTON, March 1, 1858.

MESSRS. F. W. LINCOLN, JR., & Co.

Bought of ISAAC R. BUTTS & Co.

4 Law Libraries,	- - - - -	a 2.00	8 00
2 Business Man's Law Cabinets, (enlarged)	- - - - -	a 2.25	4.50
10 Art of Sailmaking,	- - - - -	a .75	7.50
8 Merchant's, Shipmaster's and Mechanic's Assistant,	- - - - -	a 2.00	16.00

Charged in acct,	\$ 36.00
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BONDS.

A Bond, or obligation, is a deed whereby the *obligor* binds *himself*, his *heirs*, *executors*, and *administrators*, to pay a certain sum of money to another, at a day appointed, (*Blackstone Com.* ii. 340), or to perform some act. At common law a Bond is presumed to be paid after the lapse of twenty years.

If in a bond the obligor bind himself and his *heirs* to do anything whatsoever, his heirs are bound; therefore, if it is intended to bind the *heirs* the term *heirs* must be named in the bond. If a man covenant for himself *only* to pay money, build a house, or the like, and do not say in the covenant "his *executors and administrators*," yet his executors and administrators *are bound*, and shall be charged. *Sheppard's Touchstone*, 177, 178, 369.

Executors and administrators need not be named in any legal instrument; they are bound by every covenant, unless it is such a covenant as is to be performed personally by the covenantor, and there has been no breach before his death. *Cro. Eliz.* 553.

A Bond without a Condition is called a *single* one; but a Condition is generally added which makes the obligation void if the act be performed, otherwise it remains in full force.—In case this condition is not performed, the Bond becomes forfeited, or absolute at law, and charges the obligor.—A penalty for non-fulfilment of the condition is annexed, in double the principal sum.—If a bond be sealed and delivered, though it bear no date, it is valid.—If a bond be interlined, or words are erased, in important parts, it will render it void.—Bonds and all penal obligations, in whatever form, to do an act forbidden by law, or to forego any privileges secured to a man by law, are void. The same is true of agreements, or obligations to divide the profits or gains, to be derived from illegal speculations or business. Thus a bond or note to pay illegal interest, a sum of money won at gaming, or to commit a trespass on the property, or an assault on the person of another is void; as is likewise an obligation not to plead usury, infamy or any other legal defence to a suit, or not to prosecute a man for a crime, or for cheating, or taking an illegal advantage of another.

A bond requires no particular form, provided it distinctly set forth an obligation to pay money, or duty to be performed, and be sealed and delivered.

In a suit on a bond, judgment may be rendered for the amount of the penalty expressed, but execution will be issued only for the amount due in equity and good conscience, the amount to be determined by the court, or on motion of either party, by a jury.

The penalty named in the Bond may be any sum that the parties agree upon. It is usually double the amount mentioned in the obligation. It should always be sufficient to cover the loss and damage that may arise from the non-performance of the condition. In the following case the penalty, though double the amount, did not prove sufficient—"A. B. was bound in a bond, to convey to C. D. on his paying a certain sum of money, a deed of a lot of land. C. D. proceeded to erect a building on the premises exceeding the amount of the penalty, whereupon A. B. refused to convey, and paid the full amount of the penalty in the bond."

General Form of Bond.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. of G., in the county of G., am held and firmly bound to C. D., of J., in the county of J., in the sum of — dollars, [*this amount should be double the sum named in the condition, to cover costs and contingencies*] to be paid to said C. D.; to which payment I bind myself and my heirs firmly by these presents, sealed with my seal.

Dated the — day of —, A. D. 185—.

The condition of this obligation is such, That if I, the said A. B. shall pay to said C. D. the sum of — dollars and interest, on or before the — day of — 185—, then this obligation shall be void,

Signed, sealed and delivered in presence of A. B. (L. s.)

Bond of Two Obligors.

KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and E. F., of, &c., are held and firmly bound to G. H., of, &c., in the sum of — dollars, to be paid to said G. H.; to the payment whereof we jointly and severally bind ourselves and our respective heirs firmly by these presents, sealed with our seals.

Dated the — day of —, A. D. 185—.

The condition of this obligation is, That if the said A. B. and E. F., or either of them, shall pay to said G. H. — dollars and interest, on or before the — day of — 1857, then this obligation shall be void.

A. B. (L. s.)

Signed, sealed and delivered in presence of

E. F. (L. s.)

Condition to pay Money by Instalments.

The condition of this obligation is, That if I, the said A. B., shall pay to said E. F. one thousand dollars and interest, in manner following, to wit: — dollars and interest thereon on the first day of June next; — dollars and interest thereon on the first day of December next; and — dollars and interest thereon on the first day of June, 185—; then this obligation shall be void.

Signed, sealed and delivered in presence of A. B. (L. s.)

Condition to Indemnify.

The condition of this obligation is, That if I, the said A. B., shall indemnify said E. F. against all loss, cost, damage and expense to which he may be subjected by reason of his signing a bond, (or endorsing a note, &c., or paying the sum of — dollars for —,) at my request; then this obligation shall be void.

Signed, sealed and delivered in presence of A. B. (L. s.)

Condition of a Bond of Arbitration.

The condition of this obligation is such, That if said A. B. shall perform and keep the award of E. F., G. H., and I. J., all of —, or any two of them, arbitrators, mutually chosen to award, and determine concerning [*here state the dispute*], and all demands whatsoever, depending by or between the said parties, so as the said award be made in writing, and ready to be delivered to the said parties, on or before the — day of — next, then this obligation shall be void.

Signed, sealed and delivered in presence of A. B. (L. s.)

[A similar Bond should be executed by each party to the other.]

Condition of a Bond of Indemnity on paying Lost Note.

The condition of this obligation is, That whereas the said E. F., on the 14th day of March last, by his note in writing by him signed, of that date, for value received, promised the said A. B. to pay him or order, the sum of — dollars in — months from date; which said note is alleged to be lost out of his possession, and cannot be found; and whereas the said E. F. hath this day paid the said sum according to the tenor thereof: Now, therefore, if the above bound A. B. shall save the said E. F. his executors, administrators and assigns forever harmless, for having so paid said sum of money, and from all liability under and by virtue of said note, and from all loss, cost, damage and expense, that shall or may arise therefrom; then this obligation shall be void.

Signed, sealed and delivered in presence of A. B. (L. s.)

Condition of a Bond to Convey Land.

The condition of this obligation is such, that if said A. B., upon the payment of — dollars and interest, by said E. F., within one year from this date, shall convey to said E. F. and his heirs forever, a certain parcel of land, with the buildings thereon, situate in L., bounded and described as follows: [*here insert boundaries and description*]; by a warranty deed in common form, duly executed and acknowledged;—the premises being then in as good condition as they now are, necessary decay and deterioration excepted; then this obligation shall be void.

Signed, sealed and delivered in presence of A. B. (L. s.)

Bond with two Sureties.

KNOW ALL MEN BY THESE PRESENTS, That we A. B. as principal, and C. D., and E. F., as sureties, all of B—, in the county of S—, are holden and stand firmly bound unto H. G., of said B—, in the sum of — dollars, to be paid to the said H. G.; to the payment whereof we jointly and severally bind ourselves and our respective heirs, firmly by these presents sealed with our seals.

Dated the — day of —, A. D. 18—.

The condition of this, &c.

A. B. [L. s.]
C. D. [L. s.]
E. F. [L. s.]

Signed, sealed and delivered in presence of

Bond of a Treasurer, or Trustee of an Association.

KNOW &c. [same as preceding bond] to be paid unto the said L. and B., or their successors in office, or their certain attorneys. To which payment well and truly to be made, we jointly and severally bind ourselves, and our respective heirs, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

The condition of this obligation is, That whereas the above named A. B. has been chosen by an Association, known as —, Treasurer, [*or, one of the Trustees*] of said Association, by reason whereof, and as such Treasurer [*or, Trustee,*] he will receive into his hands and possession divers sums of money, goods and chattels

and other things, the property of said Association; and is bound to keep true and accurate accounts of said property, and of his receipts and disbursements for and on account of said Association.

Now, therefore, if the said A. B. shall well and truly perform all and singular the duties of Treasurer [or, Trustee] of said Association, for and during his official term, and until he shall deliver all the property which he may receive as such Treasurer [or, Trustee] to his successor in said office, or to such other person as the said Association or its authorized officers may direct, according to the provisions of the Constitution, By-Laws, Rules and Regulations of said Association now existing, or which may be by said Association adopted; then this obligation shall be void.

In presence of

Signatures and Seals as in preceding Bond.

NOTE. — See Bottomry, Respondentia, and Warehouse Bonds, Custom-House Power of Attorney, and many other valuable Forms, in "*The Merchant's Assistant and Common Carrier's and Insurer's Guide.*"

LAWS REGULATING COPARTNERSHIP.

[See Forms for Special Partners, and the Laws relating to the Duties and Liabilities of both General and Special Partners more fully stated in "*Sequel to the Business Man's Law Library: — Conveyancers', Executors', Administrators', and Copartners' Guide.*"]

Any two or more persons may enter into a contract to become partners in any business, where each contributes something of value to the business, whether of money, labor, skill or credit; and is entitled to part of the profits and subjected to a portion of the loss.

Partnerships may be general or special. General partnerships extend to the whole of the mutual dealings of the parties. Special partnerships are formed for a particular concern, or for a single dealing or adventure.

As to the control of partners over the partnership property, it depends on the articles of copartnership. The various provisions relating to the manner in which the partnership business is to be conducted, the space of time it is to endure, the capital each is to bring into the trade, the proportions in which the profits and loss are to be divided, the mode agreed on for settling the accounts, together with the various covenants adapted to each particular case, are entirely the subject of personal and private agreement.

Each member of the firm becomes responsible for the acts and contracts of his copartners, in the way of sale, purchase, promise, pledge, loan, guarantee, or agreement, where performed in the course of the partnership concern. For the same reason, if a partner draws, accepts, or endorses a bill or note, he thereby renders his firm liable. So, one partner may release actions, debts, &c. But this liability may be avoided, as where there is collusion between the party with whom the sale, purchase, &c. and the contracting partner takes place; or where one of the firm disclaims all liability, and gives notice to the party with whom the partner is about to contract; or, where the party taking the partnership security is aware that it is not given in behalf of the partnership transactions.

A man becomes a partner by allowing the world in general to presume that he is one; as, by having his name on the sign of a shop, or in the bills of parcels, invoices, &c. Persons agreeing for a share, or specific interest, in the profits as a remuneration of labor, generally involve themselves in the liability of a partner. But not if they receive a given sum for their labor, which is in proportion to a given quantum of the profits.

In Massachusetts, New York, and many of the States, acts have been passed providing for limited partnerships, by virtue of which a person, or persons, may become interested in a business, by furnishing funds to carry

it on, and are not liable for the debts of the firm beyond the amount of the fund so contributed. In the limited partnership the general partners are only allowed to conduct the business, and use their own names. Special partners have no right to interfere; but they may advise as to its management, &c. The notice of the partnership must be published in some newspaper, and be recorded.

A dissolution of partnership may take place under express stipulation in the articles, by mutual consent, by the death or insanity of one of the firm, by award of arbitrators, or by a court of equity in cases of misconduct of some member of the firm.

Agreement of Copartnership.

ARTICLES OF AGREEMENT made the — day of —, A. D. one thousand eight hundred and fifty —, between J. D. of —, of the one part, and R. R., of —, of the other part.

The said J. D. and R. R. have agreed, and by these presents do agree, to become copartners together in the art or trade of —, and do hereby promise to be governed by the following articles, namely:

First. The said business shall be carried on under the name of D. and R.

Second. Each of said partners shall furnish in cash a capital of — dollars, of which the sum of — dollars shall be advanced by each partner immediately, and the remainder by three equal monthly instalments of — dollars.

Third. Each of said parties shall give his personal attention and devote his time, during reasonable hours of business, wholly to the interests of the firm, and shall use his best skill, judgment and discretion in promoting the profits of the business; and during the continuance of this agreement neither of said partners shall engage in any speculations on his own separate account, to, or be in any way interested in any other business than that of the copartnership hereby established.

Fourth. The accounts of the said parties shall be kept in regular books, by double entry, [or single entry,] so long as either party shall desire it, and every transaction shall be duly entered, and the said books shall at all times be open to the inspection and free use of either party.

Fifth. Neither of said parties shall assume any pecuniary liability, either in his own name or that of the firm, for the accommodation of any other person without the written consent of the other party.

Sixth. All purchases of goods exceeding the value of — dollars, shall be the subject of consultation and mutual agreement by the partners.

Seventh. Neither party shall withdraw from the business of the concern more than his share of the profits, which may have accrued, nor more than — dollars monthly.

Eighth. An account of the joint stock and the joint liabilities shall be taken at the expiration of each year from the date of this instrument, and at any other time when either of the parties shall in writing request it.

Ninth. This copartnership shall continue for the term of five years from this date, subject, however, to be terminated by the death of either partner, or the mutual agreement of the parties, or a violation of either of the foregoing agreements.

Tenth. The division of the profits or losses in the business shall be equal.

Eleventh. For the purpose of securing the performance of the aforesaid agreements, it is agreed that either party, in case of any violation of them, or either of them, by the other, shall have the right to dissolve the copartnership forthwith; and, if the fact of such violation having taken place, be disputed by the party accused, it shall be left to the decision of three disinterested persons, of whom each party is to choose one person, and these two a third one, and the decision of the majority of these three shall be conclusive.

In witness whereof, we have hereunto interchangeably set our hands and seals the day and year first above written.

J. D. [L. s.]

Executed in presence of

R. R. [L. s.]

Substitute for the Second and Tenth Articles.—Second. The said J. D. shall invest in the business aforesaid, a capital of five thousand dollars, to be advanced immediately, and the said R. R. a capital of three thousand dollars, in three equal monthly instalments, the first of which shall be advanced within ten days from the date of this instrument.

Tenth.—Any losses which at the dissolution of the partnership may be found to have accrued, shall be shared in proportion to the capital invested by the said parties respectively. And whereas the said R. R. has been for many years engaged in the business aforesaid, and the said J. D. has had no experience, the following rule shall be adopted for the division of the profits which may be made, to wit:—

To the capital stock of the said R. R. shall be added the sum of ten thousand dollars, and to the capital stock of the said J. D. shall be added the sum of six thousand dollars, the said sums thus added being the respective amount, which at a profit of fifteen per cent. per annum, would produce the estimated value of their personal services, and the profits which may accrue in the business shall be shared in the proportion of the aggregates of the sums produced by the aforesaid additions respectively.

Agreement to continue the Copartnership:—to be endorsed on the back of the Articles.

IT IS AGREED, That the partnership which has expired this day [or, mention the day when it will expire,] by limitation, contained in the within written articles, shall be continued on the same terms, for the further term of — years from this date, [or from the — day of — next] with all the provisions and restrictions herein contained.

In witness whereof, we have hereto set our hands, &c.

J. D. (L. s.)

R. R. (L. s.)

Executed in presence of

** Dissolution of Copartnership.*

Whereas by articles of agreement made the — day of —, A. D. one thousand eight hundred and —, between A. B. and C. D. both of the city of —, the said A. B. and C. D. did enter into partnership, for the purpose of carrying on the trade of —, for the term of — years, and whereas the said C. D. has proposed to A. B. a dissolution of the partnership, to which proposition A. B. has assented; the parties therefore mutually agree, that the partnership heretofore existing between them be this day dissolved, and it is accordingly dissolved. And it is further

*A dissolution of copartnership, should be published immediately after it takes place, and a special notice sent to those who have dealings with the company.

stipulated and agreed mutually between them, that the said A. B. shall take the entire stock of —, now on hand belonging to the partnership, at a valuation to be set upon the same, by two skilful persons mutually appointed to value the same, and that the said A. B. also have power to collect the debts now due to the partnership, and recover the same, or any part of the same, in the name of the firm, by suits at law or in equity; and that finally the said A. B. do pay over to the said C. D. the full share and proportion of stock and profits which shall appear to be due to the said C. D. in — months from the date hereof, &c.

Witness our hands and seals, &c.

A. B. (L. s.,
C. D. (L. s.)

Executed in presence of

Notice of Dissolution of Partnership.

Notice is hereby given, that the partnership lately subsisting between A. B. and C. D. of —, under the firm of B. & D. expired on the — day of —, [or, was dissolved on the — day of —, by mutual consent.]

A. B. is authorized to settle all debts due to and by the company.

A. B.
C. D.

COMPOSITION WITH CREDITORS.

WE the undersigned, creditors of A. B. of —, in consideration of One Dollar, and other good and sufficient considerations, to us severally paid by said B., (the receipt whereof is hereby acknowledged,) do severally promise and agree with said B., that we will receive in full satisfaction and discharge of our respective claims against him, the amount of — per cent. thereof, in promissory notes for our respective per centages, payable on demand in three equal instalments, in three, six, and nine months from this date:—said notes to be dated this day, (and secured by a good endorser.)

Provided, that such notes endorsed as aforesaid, shall be tendered or delivered to us respectively within — days from this date.

In testimony whereof, we have hereunto set our hands and seals, this — day of —, A. D. eighteen hundred and fifty—.

AMOUNTS.	NAMES OF CREDITORS.	SEALS.
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Composition with Creditors, (another.)

THIS AGREEMENT of two parts, made and concluded this — day of — in the year eighteen hundred and fifty, by and between John Doe and Richard Roe, of —, merchants, and copartners under the name and style of Doe & Roe, and John Stock, of —, in the county of —, merchant, of the first part, and H. G., and the other persons, copartners and corporations, whose names are in the schedule hereto annexed, (being creditors of the said firm of D & R.) of the second part, — WITNESSETH,

That, Whereas, the said firm of Doe & Roe are indebted to the parties of the second part in divers sums of money, which they are unable punctually to pay and discharge, and have transferred and conveyed their property to the said John Stock in trust, for the benefit of the creditors of the said firm,—

Now, therefore, in consideration of the premises, and of the discharge from all their debts hereinafter set forth and granted to the said firm of D. & R. by their said creditors, the said D. & R. do hereby covenant and

agree, to and with their several and respective creditors, that they will give to each and every of them their promissory notes, bearing date the tenth day of October, A. D., 1850, payable to the order of themselves and by themselves respectively endorsed, and subsequently endorsed by the said John Stock, payable in equal sums in six, nine, and twelve months, with interest, for fifty per centum of the amount which shall be found to be due on all their bills and notes payable to each and every of said creditors. All notes and accounts to be made equal to cash on the tenth day of October as aforesaid.

And the said John Stock hereby covenants and agrees to and with the several and respective creditors of said D. & R., that he will endorse the several and respective promissory notes of said D. & R. for fifty per centum of the amounts found to be due and payable as aforesaid.

And the said H. G. and others, creditors of the said firm of D. & R., for themselves & their representatives, hereby agree to accept the promissory notes of said firm, signed and endorsed as is hereinbefore set forth, in full satisfaction and discharge of the several amounts now due and payable from the said firm to them, and hereafter to become due, the same being now contracted.*

And it is further mutually agreed by all the parties hereto, that nothing herein contained shall be considered of any force, or binding in any way, on any of the parties who shall sign this instrument, unless all the persons, copartners, and corporations, creditors of said D. & R. shall become parties hereto, within _____ days from the date hereof.

In witness whereof, the said several parties have hereto set their hands and seals, the day and year first above written.

In presence of witnesses to the signatures of

J. S.	(L. S.)
J. D.	(L. S.)
R. R.	(L. S.)
H. G., and others,	(L. S.)

*It is however mutually agreed and understood by all the parties hereto, that instead of the promissory notes of said firm of D. & R., endorsed as aforesaid, the said several creditors, may, if they elect, require, and the said firm shall give, on being notified of such election, the promissory notes of said firm, bearing date as aforesaid, payable in nine, twelve, and fifteen months with interest, for sixty per centum of the amount found to be due to each of said creditors on the tenth of October, A. D. 1850. All debts of said Doe & Roe, whether due and payable, or otherwise, to be made as cash on that day. Said notes, when received by any creditor to be in full satisfaction and discharge of the present obligations. [To be inserted in the text if deemed expedient.]

LAWS REGULATING THE SALE OF REAL ESTATE.

In using printed Forms of Deeds, Mortgages, Leases, &c., they should be examined, and the legal effect of every word and covenant well understood.

The first part of a *Deed* is called the *Premises*, or *Description*, and contains the names of the seller and buyer, (called in law *grantor* and *grantee*;) their places of residence, the consideration, description, boundaries, privileges, appurtenances, exceptions, mortgages, rights of way, &c.

The second division is called the *Habendum*, in which appear all the conditions, except the mortgages.

The third division contains the *Covenants*. If a mortgage, lease, or any other incumbrance has been set forth in the *Premises*, the *Covenant* should except the "*aforesaid mortgage*," and also every other incumbrance.

The conclusion of the Deed consists of the *Date* and *Attestation*; and here is the proper place under the words signed, sealed, &c.. directly before the names of the witnesses, to note (before signing) all erasures and interlineations, which have occurred in the Deed.

If the estate is granted for a term of years, the *habendum* will read — “To have and to hold the above granted premises to the said C. D., his heirs and assigns, for and during the term of — years, from the — day of —, A. D. 185—.”— If for the life of the grantee say “for and during the natural life of the said C. D.”

A party who contracts to execute and deliver a deed, is bound to prepare it, if there is no stipulation that it shall be prepared by the grantee.

In the construction of every instrument granting, or conveying, or authorizing the creation or conveyance of, any estate or interest in lands, it is the duty of Courts of Justice to carry into effect the intent of the parties, so far as such intent can be collected from the whole instrument, and is consistent with the rules of Law.—N. Y. R. S.

In the construction of Deeds the courts have adopted the rule, that “where the intention of the parties can be discovered, they will carry that intention into effect, if it can be done consistently with the rules of law.” 1 Mass. Rep. 226.—A palpable omission, or mistake, of a word will not defeat the intentions of the parties,—and matter will sometimes be implied, where the intention evidently requires it.

Executors or Administrators need not be mentioned in any legal instrument. They may avail themselves of any contract made with the deceased, whether they are named or not. *Shep. Touchstone*, 178.

Heirs are bound if they are named. Assignees usually need not be.

Validity of the Title.—The most direct way for the purchaser to ascertain the validity of the title of an estate is, to engage an Attorney, or other competent person, to examine the Records. He should also ascertain by personal examination, if there exists any incumbrance, by *attachment, grant, prescription, or necessity*, (not on record,) such as a *right of way, drain, ancient lights, fence, privy, pump, door, overhanging eaves, trees, water-course, nuisance, &c.*, or if the *taxes and assessments* have been paid, or the *estate been sold for the taxes*; or he may discover, when too late, that he is deprived of light, water, air, or other valuable privilege; and the warranty may prove utterly worthless, by the insolvency or removal of the grantor. So the seller, who gives a warranty, should be no less diligent in his inquiries, or he may be compelled to pay damages, which a little care and foresight would have prevented. Be sure that the wife joins in the deed, releasing her right to dower, and [homestead in some cases.]

If an estate is described by reference to a former Deed, or Plan, the instrument so referred to should be on record, and the book and page of the record be stated.

Boundaries.—Where land is described by “metes and bounds,” and as containing a certain number of acres, or feet, the description by metes and bounds controls the quantity. If described as bounded by a river or creek, the line runs through the middle of the same. [Many water rights have been lost by disregarding this.]

If a river be navigable it constitutes a highway, authority over which is vested in the State.

Land includes every thing of a permanent nature, and comprises all things upon the surface and attached to the soil of the earth. Comprehending, therefore, in its legal signification any ground, soil, or earth whatsoever, as arable, meadows, pastures, water, woods, moors, marshes, &c. It legally includeth castles, houses, and other buildings, for they consist

of two things,—land which is the foundation and the structure thereupon; consequently a conveyance of land will pass all that is upon the surface.

The words “and all buildings thereon,” in a deed have no legal operation. 4 Mass. 110.

Mortgage of Estate — If the purchaser intends to assume the payment of the mortgage, add, after the description, the following: — “And said premises are hereby conveyed subject to a mortgage given by me to E. F., to secure the payment of — dollars, dated July 1, 1850, recorded Book 500, fol. 200;—which principal sum, [or so much thereof as remains unpaid,] together with the interest thereon accrued, said grantee is to assume and pay as part of the consideration of this deed, and forever save me and my heirs harmless from all loss, cost, trouble, and damage arising therefrom.” [The usual condition “that the purchaser shall assume and pay outstanding mortgages” is not correct.]

If a Right of Way is granted, say, at the close of the description,—“together with the right of passing and repassing on, over, through, (state the location) and using the same as a public [or private] way forever.” If a right of way is reserved to the grantor, add, “excepting and reserving to the said B. his heirs, and assigns, the right of passing, &c.”

Restrictions.—If the purchaser covenants to build his house after a certain style, and place it a certain number of feet back from the street or highway, or agrees to any other restrictions, he should bind the seller in similar restrictions, in regard to the sale of contiguous lots.

Where the estate is drained by a marsh, the purchaser should require of the seller that the drain be kept open and free forever; or the marsh may be filled up and the drain declared a nuisance.

If the estate is held by a wife in her own right (by conveyance, devise, or bequest,) and the husband sell the same, and she relinquish her right of dower, it does not pass the estate. The sale is void.

Penalty for non-performance of Contract.—Every agreement for the sale of real estate must be in *writing*. Where there is a penalty annexed for the non-performance of the agreement, the party failing to perform will not be liable for the whole amount of the penalty, but only for the actual damages sustained; and this will be true, even if the sum is declared to be not a penalty, but liquidated damages, unless: 1st. Where the damages are uncertain, and are *not capable of being ascertained* by any satisfactory and known rule. 2d. Where it is apparent, that the damages have already been the subject of actual and fair calculation and adjustment between the parties; in which two cases, the party may recover the amount thus agreed upon in the instrument, as liquidated damages.—*Greenleaf's Evidences.*

A deed takes effect by the delivery, and it is not material whether the delivery is before or after the date. No particular form is necessary for the delivery of a deed. Any act is sufficient, which indicates an intention to put it in possession of the grantee.

In many of the States two witnesses are required to a Deed, in some one, and in a few none. So in some States the law requires that a deed be sealed, in others a scrawl, or circle of ink at the end of each name, is sufficient, and in a few neither seal nor scrawl is required. It is always safe to have deeds sealed, and witnessed by two subscribing witnesses

Deeds should be Signed, Sealed, Witnessed, Acknowledged, Delivered, and Recorded.

If a Deed be recorded, without having been acknowledged, the record is of no effect. 23 Pick. 80.

DEEDS.

● 1. *Quit-Claim Deed.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, merchant, in consideration of — dollars to me paid by C. D., of —, in the county of —, and State of —, farmer, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quit claim unto the said C. D., his heirs and assigns, all — lot — of land in said B., being lot — numbered — on G. H's plan, dated —, a lithograph copy of which is hereto annexed, bounded [*here state how bounded*], with all the rights, easements, privileges, and appurtenances thereto belonging. [1]

To have and to hold the above released premises to the said C. D., his heirs and assigns, to his and their use and behoof forever.

And I, the said A. B., for myself and my heirs, executors and administrators, do covenant with the said C. D., his heirs and assigns, that the premises are free from all incumbrances made or suffered by me; [2] and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me, but against none other. [3]

In witness whereof, I, the said A. B. [being unmarried] have hereunto set my hand and seal, this — day of —, in the year of our Lord one thousand eight hundred and fifty—.

Signed, sealed and delivered in presence of

A. B. (L. s.)

NOTE. If the grantor be married there should be a release of dower [and homestead.] See last paragraph of No. 3.

[1] Here insert the exceptions, restrictions, &c., if there be any, as follows: C. Street and N. Place, as laid down on said Plan, are to be deemed public highways, and as such may be used freely by the grantee, and his heirs and assigns, and by the public generally; but until the same are legally accepted as highways, they are to be kept in good repair by the abutters—each abutter paying his just proportion of the whole expense.

The premises are however conveyed subject to the following restrictions, which are to remain in force till January 1, 1875, and no longer.

[2] If restrictions have been stated, here insert '*except as aforesaid.*'

[3] If there are restrictions, here insert '*except those claiming under said restrictions,*' or '*right of way,*' or '*right of entry, abatement and removal,*' &c. &c.

2. *Quit-Claim Deed, by Trustee.*

KNOW ALL MEN BY THESE PRESENTS, That I, H. P., of —, in the county of —, and State of —, gentleman, as I am trustee for G. H. and others, under an Indenture of two parts, dated, —, 18—, in virtue and in execution of the power and authority in me vested in and by said Indenture, and any and all other powers me hereto enabling, and in consideration of, [*after which proceed as in No. 1, to the close of the third paragraph.*]

In witness whereof, I the said H. P., trustee as aforesaid, [being unmarried,] have hereunto set my hand and seal this — day of —, in the year of our Lord eighteen hundred and fifty—.

H. P. (L. s.)

Signed, sealed and delivered in presence of

3. Warranty Deed.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, merchant, in consideration of — dollars to me paid by C. D., of —, in the county of —, and State of —, farmer, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey, unto the said C. D., his heirs and assigns, a certain parcel of land, situate in —, in said county, bounded and described as follows: [Here insert description and boundaries]. [See description in note at foot of page] with all the privileges and appurtenances thereto belonging. [1]

To have and to hold the aforegranted premises, to the said C. D., his heirs and assigns, to his and their use and behoof forever.

And I, the said A. B., for myself and my heirs, executors, and administrators, do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises, that they are free from all incumbrances [2]; that I have good right to sell and convey the same to the said C. D., his heirs and assigns forever, [3] as aforesaid; and that I will, and my heirs, executors, and administrators shall, WARRANT and DEFEND the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said A. B., and Mary my wife, in token of her release of all right of dower and homestead (*as the case may be*) in the granted premises, have hereunto set our hands and seals this — day of —, in the year of our Lord eighteen hundred and fifty-eight.

A. B. [L. s.]
M. B. [L. s.]

Signed, sealed and delivered in presence of

[1] Here insert *exceptions, liens, &c.*, if there be any, as follows: — [The premises are however conveyed subject to a, or, these &c.] [See pp. 36—38.]

[2] If incumbrances have been set forth in the premises, here say— [except as aforesaid;]

[3] If incumbrances have been stated, here insert the word [subject]

☞ See “**SEQUEL TO THE BUSINESS MAN’S LAW LIBRARY**” for Directions and Forms for the Execution and Acknowledgment of Deeds in all the States of the Union — being the Conveyancers’ Assistant, Executors’, Administrators’, and Copartners’ Guide.

Description and Boundaries of the Estate.

Being a certain piece designated as lot —, on a plan of land formerly belonging to T. & S., which plan was made by J. L., dated November —, 1854, and recorded with the — Deeds; and to which plan reference is here made for a further description of the location and boundaries of said lot. Said lot is bounded and measures according to said plan as follows:

Bounded — southerly on S — Street, there measuring thirty feet; westerly on house and land of I. B. there measuring thirty feet, and easterly on land of J. R. there measuring forty feet eight inches; northerly on land of J. D. there measuring forty feet; — all such measurements being more or less, or however otherwise bounded;

Containing thirty acres, more or less, bounded southerly on the highway leading from B. to T.; easterly on land of T. F.; westerly on land of E. N.; and northerly partly on land of O. P. and partly on land of N. S., (being the same conveyed to me by G. N., by his deed dated —, 185 —, recorded in the — vol. —, page —).

4. *Warranty Deed to convey Wife's Real Estate.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of —, in the county of —, and State of —, merchant, and M. B. wife of said A. B., in her own right, in consideration of one thousand and eighty dollars paid by [*the City of —,*] the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey to the said [*City of —, its successors**] and assigns forever, one undivided tenth part of a certain messuage [here describe how butted and bounded, how measuring, and how it came into possession, if by will, deed, &c.,] *after which proceed as in No. 3 to the close of the third paragraph*, and then say:—

In witness whereof, we, the said A. B. and M. B., have hereunto set our hands and seals, this — day of —, in the year of our Lord one thousand eight hundred and fifty—.

A. B. (L. s.)
M. B. (L. s.)

Signed, sealed and delivered in presence of

5. *Warranty Deed executed by Attorney.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, in consideration of —, [*after which proceed as in No. 3 to the close of the third paragraph*, and then say:—

In witness whereof, the said A. B., grantor, hath hereunto set his hand and seal, this — day of —, in the year of our Lord one thousand eight hundred and fifty—, by C. D., his attorney duly authorized, by letter of attorney herewith recorded.

A. B. (L. s.)
By C. D., his Attorney.

Signed, sealed and delivered in presence of

6. † *Deed of Real Estate to a Married Woman, to her sole and separate use.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, farmer, in consideration of the sum of — dollars, to me paid by C. D., wife of E. D., of — aforesaid, merchant, the receipt of which is hereby acknowledged, do give, grant, bargain, sell, and convey unto the said C. D., her heirs and assigns, a certain lot of land, situate, lying and being in — aforesaid, with the dwelling house thereon standing, bounded and described as follows: [here insert the description,] with all the privileges and appurtenances thereto belonging.

* Instead of [City of,] insert town, if it be so, or the name of an individual, if the Deed be made to one, in which case [C. D., his heirs and assigns] should take the place of "city of —, its successors."

† This deed must be recorded in the county where the land lies, and also in the county where the husband resides, if in Massachusetts, otherwise, in the county where the grantor resides, within ninety days from its delivery.

A husband can secure property to his wife by conveying it to some friend in trust for her benefit, but not to the prejudice of his creditors. So a female may before marriage, convey property to a third person in trust for her benefit; and thereby place it beyond the control or liabilities of her future husband.

42 DEED FROM A FATHER TO A MARRIED DAUGHTER.

To have and to hold the above granted premises, to her, the said C. D., wife of the said E. D., to her sole and separate use, free from the interference or control of her present husband E. D., or of any future husband, and to her heirs and assigns, to her and their sole use forever.

(Here insert Covenants of Warranty, as in Deed 3, if deemed necessary.)

In witness whereof, I, the said A. B., have, &c.

A. B. (L. s.)

Signed, sealed and delivered in presence of

[If grantor be married, there should be a release of Dower.]

7. Deed of Gift of Personal Chattels from a Father to a Married Daughter to her sole and separate use.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, merchant, in consideration of the love and affection which I bear to my daughter, S. B. D., wife of C. D., of — aforesaid, and for divers other good and valid considerations, do hereby give, grant, confirm and convey unto my said daughter, S. B. D., her heirs and assigns, all and singular the goods and chattels following, to wit: [or, say, goods and chattels mentioned in the schedule hereto annexed.]

1 Bureau,.....	Marked	S. B. D. on the back.
1 Grecian Table,.....	"	S. B. D. under the leaf.
12 Mahogany Chairs,.....	"	S. B. D. under the bottom.
3 Silver Table Spoons,.....	"	S. B. D. on the handle.
12 Silver Tea Spoons,.....	"	S. B. D. " " "
1 Silver Tankard,.....	"	A. B. to S. B. D. on the side.

To have and to hold the above described goods and chattels to her sole and separate use, free from the interference and control of her present, or any future husband, and to her heirs and assigns, to her and their sole use and behoof forever.

In witness whereof, I, the said A. B., have, &c.

Signed, sealed and delivered in presence of

A. B. [L. s.]

8. Deed of a Right of Way.†

THIS INDENTURE made this — day of —, in the year of our Lord one thousand eight hundred and fifty—, between A. B. of —, of the one part, and C. D. of —, of the other part, Witnesseth,

* In some States must be recorded, or the property will be liable to attachment for the husband's debts. [See "*Trader's Guide*," one of this series, page 130, Article "*Rights in Property of Married Women*."]

† *Easements*: No person can acquire any right to a privilege of way, air, or light, nor any other easement, in Massachusetts, New York, and several other States, unless such shall have been continued uninterrupted for twenty years. In Connecticut and Vermont, for fifteen. In South Carolina, thirty. But it is held not to exist in New Jersey or Pennsylvania.

In some States the acquiring of such a right may be prevented by serving a notice on the opposite party, and recording the same; and a copy of the notice must be affixed to the house or some other conspicuous part of the premises.

[See Law of Easements, and Forms of Notice for Discontinuance of Easements, at page 67.]

That the said A. B. in consideration of — dollars to him paid by the said C. D., doth hereby grant, bargain, and sell unto the said C. D. his heirs and assigns, the free and uninterrupted use of, and passage in and along a certain alley or passage of — in breadth, by — feet in depth, extending out of and from — street, in the town aforesaid, along the south side of the present messuage, dwelling house and lot of the said C. D., together with free ingress, egress and regress to and for the said C. D., his heirs and assigns, his and their tenants and undertenants, occupiers or possessors of the messuage and ground of the said C. D. contiguous to the said alley, or passage, at all times and seasons, forever hereafter, into, along, upon, and out of the said alley, or passage, in common with him the said A. B. his heirs and assigns, tenants or occupiers of the messuage and ground of the said A. B. adjacent to the same alley, or passage,

To have and to hold all and singular the privileges aforesaid, to him the said C. D. his heirs and assigns, to the only proper use and behoof of him the said C. D. his heirs and assigns, forever, in common with him the said A. B., his heirs and assigns, as aforesaid: Subject nevertheless to the moiety or equal half part of all necessary charges and expenses which shall from time to time accrue, in paving, amending, repairing, and cleansing the said alley, or passage.

In witness whereof, the said parties have, &c.

Signed, sealed and delivered in presence of

A. B. [L. s.]
C. D. [L. s.]

Forms of Deeds prescribed by the States of Indiana, Virginia, and Iowa.

STATUTE DEEDS OF INDIANA.

Warranty Deed.

A. B. conveys and warrants to C. D., the following tract of land, [here describe the premises] for the sum of — dollars.

This deed dated, signed, sealed and acknowledged by the grantor, shall be deemed to be a good conveyance in fee simple to the grantee, his heirs and assigns.

Quit Claim Deed.

A. B., quit claims to C. D., the following lot of land, [here describe the premises] for the sum of — dollars.

This deed dated, signed, sealed and acknowledged by the grantor, shall be deemed a good quit claim to the grantee, his heirs and assigns.

Mortgage Deed.

A. B., mortgages and warrants to C. D. [here describe the premises] to secure the repayment of [here write the sum, note, bond, or other evidence of debt, or a description thereof sought to be secured, also the date of the repayment.]

This mortgage deed dated, signed, sealed and acknowledged shall be deemed a good mortgage.

STATUTE DEEDS OF VIRGINIA.—[From Code of Virginia, 1849.]

Deed to convey the Grantor's whole Interest.

THIS deed, made the — day of — in the year 1855, between [here insert the names of parties], witnesseth: that in consideration of [here state the consideration], the said — doth [or do,] grant unto the said — *, all &c. [here describe the property, and insert covenants or any other provisions].

Witness the following signature & seal, [or signatures & seals.]

Deed of Lease.

THIS deed made the — day of —, in the year 1855, between [here insert the names of parties], witnesseth: that the said — doth [or do] demise unto the said —, his personal representatives and assigns, all &c. [here describe the property] from the — day of —, for the term of — years, thence ensuing, yielding therefor during the said term, the rent of [here state the rent and mode of payment.]

Witness the following signature and seal [or signatures and seals.]

Deed of Trust to Secure Debts or Indemnify Sureties.

THIS deed, made the — day of —, in the year 1855, between —, [the grantor] of the one part, and —, [the trustee] of the other part, witnesseth: that the said —, [the grantor] doth [or do] grant unto the said —, [the trustee] the following property, [here describe the debts to be secured, or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon]. [To be witnessed and sealed as above.]

STATUTE DEEDS OF IOWA.—[From the Code of Iowa.]

Quit Claim Deed.

For the consideration of — dollars, I hereby Quit Claim to A. B. all my interest in the following tract of land [describing it].

Warranty Deed.

For the consideration of — dollars, I hereby convey to A. B. the following tract of land [describing it], and I warrant the title against all persons whomsoever.

Mortgage Deed.

The same as a Deed of Conveyance — adding — “to be void upon condition that I pay, [here state the sum, note, bond, &c.]”

Chancellor Kent's Form of Deed.

I, A. B., in consideration of — [here state the consideration] to me paid by C. D., do bargain and sell to C. D. [and his heirs *] the lot of land bounded &c. [here describe the property and insert covenants or any other provisions.] Witness my hand and seal &c.

* In most of the States the term “heirs” should be inserted in deeds of real estate if it is intended that the purchaser shall take more than a life interest. But in New York, Virginia, Iowa, and Missouri, its insertion is not requisite to create or convey an estate in fee. The words “executors” and “administrators” are omitted, as they are bound, in all cases, though not named.

Forms and Regulations for the Assignment of United States Land Warrants.

Form for the Assignment of the Warrant. No. 1.

For value received, I, E. F. J., to whom the within Warrant, No. — was issued, do hereby sell and assign unto [*this blank should not be filled until the Warrant is located,*] and to his heirs and assigns forever, the said Warrant, and authorize — to locate the same, and receive a patent therefor.

Witness my hand and seal, this — day of — 185

Attest :

E. F. J. [L. s.]

Two Witnesses. { E. F.
G. H.

Form of Acknowledgment where the Vendor is known to the Officer taking the Acknowledgment.

STATE OF —, COUNTY OF —.

On this — day of —, in the year —, personally appeared (*here insert the name of the Warrantee*) to me well known, and acknowledged the foregoing Assignment to be his act and deed; and I certify, that the said (*here insert the name of the Warrantee*) is the identical person to whom the within Warrant issued, and who executed the foregoing Assignment thereof. (*Officer's Signature.*)

The assignment and acknowledgment must be endorsed upon the warrant.

Form of Acknowledgment where the Vendor is not known to the Officer, and his identity has to be proved.

STATE OF —, COUNTY OF —.

On this — day of —, in the year —, personally came before me, (*here insert the name of the Warrantee*) and (*here insert the name and residence of a witness*) and the said (*here insert the name of the witness,*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said (*here insert the name of the Warrantee,*) and that he is the same person to whom the within Warrant issued, and who executed the foregoing Assignment, and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the Warrantee,*) thereupon acknowledged the said Assignment to be his act and deed. (*Officer's Signature.*)

Certificate of the Clerk of the Court, Judge, or other person who is authorized to certify, under seal, to the official character of the Officer who takes Acknowledgments of Assignments.

STATE OF —, COUNTY OF —.

I, E. A. J., Clerk of the Court of —, in the County and State aforesaid, hereby certify that —, whose genuine signature is affixed to the above acknowledgment, was at the time of signing the same, a Justice of the Peace [notary public or other officer] duly authorized by law to take such acknowledgment, and that full faith and credit are due to all his official acts as such.

Given under my hand and the seal of said Court, this — day of —, 18

[L. s.]

E. A. J., Clerk of the Court of —.

When the acknowledgment is taken by a Clerk of a Court, or a Judge using a seal, no certificate of his official character is required.

In legal instruments the names of the parties should be given in full.

GUARANTEES, FORMS OF.

*Continuing Guarantee for Goods to be delivered.**[A Guarantee should be founded on some consideration.]*

"I HEREBY guarantee the payment to Messrs. E. F. and G. H., for all goods which they may from time to time supply to John Williams, of &c. not exceeding the amount of \$——. *[This would be sufficient; but it might, in order to prevent all questions, be as well to add the words, 'this is to be a continuing guarantee.']* Dated &c. A. B.

*[The supplying the goods is the consideration implied.]**Other Examples of Guarantees.*

"I HEREBY guarantee the payment to Messrs. &c., for such goods as they may supply to J. W., of &c., not exceeding the amount of \$——; but this is not intended as a continuing guarantee, but only for the once supplying goods to the above amount. Dated &c."

"I hereby guarantee the debt of \$100 due to you by B, in consideration of your giving him a farther credit of \$200."

[This applies only to a single transaction, and is confined to the single debt of \$100.]

"I hereby guarantee the debt of \$100, due to you by B, on your giving him a farther credit; as also what he may contract with you from this date up to the 29th of October next."

[This applies to the debt of \$100, and extends to all transactions of whatever amount, of B with the party to whom the guarantee is given, up to a given day.]

"I hereby guarantee the debt of \$100, due to you by B, on your giving him a farther credit; and also any debt he may contract with you, not exceeding \$500, for goods supplied to him after this date."

[Is a guarantee for the debt of \$100, and extending to any debt not exceeding \$500, which may at any time become due for goods delivered to B, until the credit shall be recalled by him who gives the guarantee, and applies to debts successively renewed.]

"I hereby guarantee the payment for any goods which you may deliver to B after this date."

*[Extends to all transactions for goods sold to B at any future time, and to any amount, and continues in force until the credit is recalled.]**For Debts already Due, to prevent Proceedings.*

"MESSRS. E. F. and G. H. having, at my request, agreed to forego proceedings which they were about to take against Mr. J. W., of &c., to enforce the payment of \$—— due from him to them, I hereby, in consideration thereof, guarantee the payment to them of that sum. Dated &c."

To stop Proceedings when commenced.

MESSRS. E. F. and G. H. having at my request, agreed to discontinue the proceedings taken by them against, &c. to enforce payment of &c. due from him to them, I hereby, in consideration thereof, guarantee the payment of that sum and of \$—— costs."

Guarantee for payment of Negotiable Note.

"Pay to the bearer, and for value received, I guarantee the payment of the within. Dated, &c. E. F."

Guarantee for Payment of Rent.

"In consideration of the execution of the within written lease, at our request, we do hereby guarantee to the said A. A. the true and punctual payment of the rent reserved at the times and in the manner therein mentioned, and in default thereof, promise to pay the same on demand.

Witness our hands and seals, this — day of, &c. E. G. [L.S.]
Executed in presence of F. F. [L.S.]"

FORMS OF LEASES.

.Directions.

A Lease is a conveyance of lands or tenements in consideration of rent, or other annual recompense, for *life, years, or at will*. The contract for a Lease may be expressed *verbally* or in *writing*. If verbally it usually has only the force and effect of a tenancy at will. If in writing, it must be subscribed by the party making it, or his authorized agent.

The statute law, in some States, requires that Leases for one or more years be in writing, signed, sealed and delivered in the presence of one or more subscribing witnesses, and be registered or recorded. In Maine, Massachusetts, New Hampshire, and Maryland, the term is seven years; in New York, Pennsylvania, Ohio and Indiana, three; in Vermont, Connecticut, Rhode Island and South Carolina, one; in Kentucky and Virginia, five.

The following cautions are necessary to be observed on taking the Lease of a house. 1. Whether there are any symptoms of dampness?—2. Whether the chimneys are smoky?—3. Whether the house is subject to unpleasant smells?—4. Whether the lower part of the house is well ventilated, and there is a good drainage to the cellar?—5. Whether the house is infested with bugs, cockroaches, moths, or any other vermin?—6. Whether it is supplied with good drinking and washing water?—7. Who is to keep the pumps, cisterns, &c. in good repair?—8. If the water fails or becomes impure, or the water fixtures get out of repair, how shall the tenant supply himself?—9. Whether the house leaks?—10. Whether the landlord or tenant is to keep the privy, water courses, &c., clean and in good condition?—11. Whether the house is in good repair; and the landlord will keep it so during the term?—12. Whether the landlord is to pay the taxes? If so, a covenant to that effect should be inserted among the agreements. If the tenant, the like among his. A Lease is a written contract, and every thing agreed upon or contracted for by the Landlord or Tenant, should be stated in the Lease.

In taking a house on Lease, the tenant should carefully examine the *Covenants* of the Lease, or he may, when too late, discover that he is so tied down by the terms of the lease, as to render the house unfit for his purposes, or that the restrictions may involve him in difficulties, and subject him to perpetual annoyance; he may by the terms of the lease, be restrained from making necessary or convenient alterations; he may be compelled to rebuild or pay rent if the premises be burnt down, or rendered uninhabitable by fire, or other accident; he may be liable to forfeit his lease, or be subject to a penalty, if he assign over his interest, carry on a trade, or the like; or he may be subject to pay the taxes, or be assessed for the water tax, or be otherwise annoyed.
"The law does not protect men from their own carelessness or ignorance."

NOTE.—For further information on this important subject see "*Landlord's and Tenant's Assistant*," one of this series, where can be found Forms of Leases of Houses, Stores, Farm on Shares, Furniture, Tools, Assignments, Surrenders, Guarantees, Special Covenants, and the Laws regulating the Hiring and Letting of Houses, and Ejectment for Non-payment of Rent, &c.

Form of Lease of Store or House.

THIS INDENTURE, made this ——— day of ———, in the year eighteen hundred and fifty—, between A. B. of ———, and C. D. of ———, witnesses, that, in consideration of the covenants herein contained on the part of the said C. D. to be kept and performed, the said A. B. does hereby lease to the said C. D. the *store, with the appurtenances*, numbered 22 B. street, in the city of B. [*or describe the premises as is usual in deeds.*]

To have and to hold the same to the said lessee, for the term of ——— years from the date hereof, the said lessee paying therefor the yearly rent of ——— dollars, during the said term.

And the lessee covenants with the lessor to pay the said rent in quarterly payments of ——— dollars each, at the expiration of each and every quarter during the said term; the first payment thereof to be made on the — day of —, now next ensuing; — and to make no unlawful, improper, or offensive use of the premises, to quit and deliver up the same, and all future erections and additions, to the lessor, peaceably and quietly, at the end of the term, in as good order and condition, (reasonable use and wearing thereof, fire and other unavoidable casualties, excepted) as the same now are, or may be put into, by the lessor, or those having his estate in the premises; to pay all taxes and assessments whatsoever; whether in the nature of taxes now in being or not, and all charges for cleansing, which may be payable for or in respect of the premises or any part thereof during the said term, together with the rent, taxes, assessments and charges as above stated, for such further time as the lessee, or those claiming under him may hold the premises; not to make or suffer any waste thereof, — nor make nor suffer to be made, any alteration therein, nor lease, nor underlet, nor permit any other person or persons to occupy the same, except such as the lessor, or those having his estate in the premises, shall in writing approve; and that the lessor, or those having his estate in the premises, with his and their agents, at seasonable times may enter to view the premises, and make repairs.

Provided always, and these presents are upon this condition: That in case the said rent or taxes shall be in arrear for the space of one week, and the same shall have been duly demanded, in writing, on or after the day when the same shall have become payable — or, if the lessee, in case of his insolvency, shall fail to give reasonable security for the payment of all sums then due, and thereafter to grow due, under this lease; or if any of the covenants herein contained, to be observed on the part of the lessee or those claiming under him shall be broken, — the lessor or those having his estate in the premises, whilst such neglect or default continues, may, without further notice or demand, enter upon the premises and expel the lessee or those claiming under him, or may otherwise legally evict him or them without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant.

Provided, also, that, in case the premises, or any part thereof, shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent here-

inbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be suspended, or abated until the premises shall have been put by the lessor, or those having his estate in the premises, in proper condition for use and habitation.

In witness whereof, the parties have hereunto interchangeably set their hands and seals, the day and year first above written.

A. B. [L. s.]

C. D. [L. s.]

Executed in presence of

Lease of House or Store.

A. B. and C. D., both of W., agree as follows:—A. B. leases to C. D. his house [store] with the appurtenances, numbered 22 D. Street, in W., for two years from the date hereof.

C. D. agrees to pay four hundred dollars a year rent, payable in equal quarter-yearly payments, the first payment to be made on the — day of —, now next ensuing, and not to assign or lease the premises or any part thereof, nor make alterations therein, without B.'s written consent; and at the termination of this lease, to quit and deliver up the premises in good condition and repair, unavoidable casualties excepted.

In case said premises shall be rendered unfit for their accustomed uses by any unavoidable casualty, thereupon this lease shall be ended.

This lease shall be void if C. D. fails to perform this agreement.

Witness our hands and seals this — day of —, 1856.

A. B. [L. s.]

C. D. [L. s.]

Executed in presence of

Notice from Landlord to Tenant to Quit.

SIR,—For the purpose of determining your tenancy in the estate No. 5 B. Street, in the city [town] of B., now in your possession, you are hereby notified to quit and deliver up to me the premises aforesaid, on the — day of — next, according to law.

C. D., Landlord.

To Mr. A. B., Tenant.

Dated, —, Oct. 1, 185—.

Notice from Tenant to Landlord of intention to Quit.

SIR,—For the purpose of determining my tenancy in the estate, which I now hold of you, known as No. 5 B. Street, in the city [town] of B., you are hereby notified that I shall quit and deliver up to you the premises aforesaid, on the — day of — next, according to law.

A. B., Tenant.

To Mr. C. D. Landlord.

Dated, —, Oct. 1, 185—.

Notice to Quit for Non-payment of Rent.

SIR,—You are hereby notified to quit, and deliver up to me, the house and appurtenances, known as No. 5 B. Street, in the city [town] of B., now occupied by you, according to law, your rent being due and unpaid.

C. D. Landlord.

To A. B. Tenant.

Dated, —, Oct. 1, 185—.

MORTGAGE OF PERSONAL PROPERTY.

A mortgage is a conveyance, or sale of goods, to become an absolute interest, if not redeemed at a certain time. The execution and registration is a substitute for a delivery of the articles, when they can be *specified and identified by a written description*.—See Laws at pp. 55, 56.

In Alabama, mortgage must be recorded in the county in which the grantor resides, also where the property is at the date of the mortgage; and if removed to another county must be recorded in the county to which it is removed within six months from such removal.

In Arkansas, mortgage must be acknowledged, and recorded in the county in which the mortgagor resides. If the property be removed beyond the county, without consent of mortgagee, the person so removing shall be liable to imprisonment for not less than one nor more than two years.

In California, the mortgagor and mortgagee shall make affidavit that the mortgage is *bona fide*, and made without any design to defraud or delay creditors; which affidavit shall be attached to the mortgage. Mortgage must be recorded by the county recorder where mortgagor resides, and also in the county where the property is located.

In Connecticut, machinery used in a manufacturing or mechanical establishment, household furniture, and hay, or other personal property, may be mortgaged. If the mortgagor retain possession, the mortgage must be described, executed and recorded in all respects as mortgages of land.

In Florida, mortgage must be acknowledged, and recorded in the county where the property shall be at the time of the execution of the mortgage.

In Georgia, mortgage must be proved by the affidavit of the subscribing witness, and recorded within three months, by the clerk of the superior court, in the county where the mortgagor resided at the time of execution of the mortgage.

In Illinois, mortgages must be acknowledged, and recorded in the office of the recorder of the county in which mortgagor resides, and is valid for only two years. If mortgagor sell mortgaged property, without informing the purchaser, he shall forfeit twice its value.

In Indiana, mortgages must be proved or acknowledged as provided in cases of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor resides, within ten days after execution.

In Iowa, mortgages must be executed and acknowledged like conveyances of real estate, and recorded in the recorder's office, within ten days.

In Kentucky, mortgage must be acknowledged, and recorded in the county where the mortgagor resides; same as deeds of real estate.

In Louisiana, all mortgages must be recorded with the register of mortgages, within six days (when executed in N. Orleans) from the date, and a day more for every two leagues from the place of execution, as to mortgages executed in other parishes.

In Maine, if the debt secured exceeds thirty dollars, the Mortgage must be recorded in the town where the mortgagor resides. Property may be redeemed by mortgagor within sixty days after condition broken, unless it has been sold in pursuance of contract between the parties.

In Maryland, mortgage must be acknowledged before a justice of the county where the mortgagor resides, and the affidavit of the mortgagor or mortgagee must be endorsed on the mortgage, stating that the consideration is true and *bona fide*. To be recorded within twenty days, with the records of the county.

In Massachusetts, Mortgage must be recorded by the clerk of the town where the mortgagor resides, and also by the clerk of the city or town in which he principally transacts his business, or follows his trade or calling. If the property is not sold in pursuance of a contract between the parties, the right of the mortgagor, or his assigns, to the property, shall not be forfeited until sixty days after the mortgagee, or his assigns, shall have given written notice to the mortgagor, or the person in possession of said property, claiming the same, of his

or their intention to foreclose said mortgage for a breach of the conditions thereof, and caused a copy of the same notice to be recorded in the clerk's offices where the mortgages are recorded. Mortgages of personal property are discharged in like manner as real estate—see page 57.—If the mortgagor sell the property, or part thereof, without the *written* consent of the mortgagee, and without informing the person to whom he sells, that the same is mortgaged, he shall be punished by a fine not exceeding \$100, or by imprisonment in jail or house of correction not exceeding one year.

In Michigan, mortgage must be filed in the office of the clerk of the township where the mortgagor resides; such mortgage is valid for one year only, unless renewed within thirty days next preceding the expiration of the year, by the mortgagee, and such mortgage shall be so renewed from year to year.

In Minnesota, a mortgage, or a copy thereof, must be filed in the office of the register of deeds of the county where the mortgagor resides, and in the case of a non-resident where the property may be at the time of the execution of the mortgage.

In Mississippi, mortgage must be acknowledged, and recorded in the court of the county within three months; and if removed to another county must be again recorded in that county within twelve months after such removal.

In Missouri, mortgage must be acknowledged, and recorded in the county where the mortgagor resides, the same as deeds of real property.

In New Hampshire Mortgages of real estate must be recorded in the office of register of deeds. Mortgages of personal property must be recorded in the office of the town clerk where the mortgagor resides, and the mortgagor and mortgagee must swear that the mortgage is made for securing the debt specified in the condition thereof, and for no other purpose, and that it is a just debt, honestly due from the mortgagor to the mortgagee. A second mortgage cannot be executed on the same property, without setting forth in the subsequent mortgage the existence of the previous one. Property cannot be sold without the written consent of the mortgagee.

In the State of New York, a mortgage of personal property must be *filed and registered* if in the city of New York, in the office of the register; if in any other city or county town, in the clerk's office therein; if in any other town, in the town clerk's office. It becomes void, if not renewed within thirty days before the expiration of the year.

In North Carolina, mortgage must be proved, and registered within six months after execution, in the county where the mortgagor resides. Mortgage can be redeemed within two years after forfeiture.

In Ohio, Mortgages of personal property, or chattels, must be deposited with the clerk of the township where the mortgagor resides. If not a resident, then with the clerk of the township where the property shall be at the time of the execution of the mortgage. It becomes void if not renewed within thirty days before the expiration of the year.

In Rhode Island, the mortgage must be recorded by the clerk of the town where the mortgagor shall reside at the time of making the same. Mortgagor can redeem the premises within sixty days, after condition broken, unless the property, in the mean time, shall have been sold in pursuance of the contract between the parties.

In South Carolina, mortgage must be recorded in the office of the register of mesue conveyances for the district where mortgagor resides.

In Tennessee, mortgage must be acknowledged and recorded the same as mortgages of real estate.

In Texas, mortgage must be proved by two or more witnesses, or acknowledged, and recorded in the county where mortgagor resides.

In Vermont, mortgages of machinery used in factory, shop or mill, are not valid, unless possession be delivered to and retained by the mortgagee.

In Virginia, mortgages conveying real estate, or goods and chattels, must be recorded in the county or corporation where the property may be.

In Wisconsin, mortgage is valid for one year only, unless renewed within thirty days before expiration, and recorded in the office of the clerk of the town or city where the mortgagor resides, or if a non-resident of the State, where the property may be at the time.

1. *Chattel Mortgage of Goods, Tools, Machinery, Household Furniture, &c.*

BE IT KNOWN, That I, A. B., of —, in consideration of — dollars, to me paid by C. D. of —, do sell and convey to said C. D., the following goods and chattels, to wit: — [or, if numerous, say, *mentioned in the schedule hereto annexed*]; — warranted free of incumbrance, and against any adverse claims; upon condition that if I shall pay my certain promissory note, bearing even date herewith, given to the said C. D., or order, for the sum of — dollars, according to the tenor of said note, then this mortgage shall be void.

And it is agreed that the mortgagor shall remain in possession of said property till condition broken.

Witness my hand and seal, this — day of —, 1858.

A. B. [L. s.]

Executed in presence of

Must be recorded.

2. *Another Mortgage of Personal Property.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in consideration of the sum of — dollars, to me paid by C. D., of —, do grant, bargain, sell and convey unto the said C. D., the following articles of personal property, to wit: [or, if the goods are too numerous to be recited, say, *all and singular the goods and chattels, wares and merchandize, mentioned and contained in the schedule hereunto annexed*.] and now in the —, in the town of —, [city] aforesaid.

To hold the afore-granted goods and chattels to the said C. D., and his assigns, forever.

And I, the said A. B., do avouch myself to be the lawful owner of said goods and chattels, and have good right to sell and dispose of the same in manner aforesaid.

Provided, nevertheless, that if the said A. B., pay to the said C. D., or his assigns, the sum of — dollars, in — years from date, with interest on said sum at the rate of — per cent. per annum, payable semi-annually, then this deed, as also a certain note, bearing even date with these presents, given by the said A. B. to the said C. D., or order, to pay the said sum and interest, and at the times aforesaid, shall both be void.

In witness whereof, I, the said A. B. have hereunto set my hand and seal, this — day of — in the year of our Lord eighteen hundred and —.

A. B. [L. s.]

Signed, sealed and delivered in presence of

[Must be recorded.]

3. *Chattel Mortgage Power of Sale.*

The following, or other conditions, may be added, if desired.

But if default shall be made in payment of the principal or interest above mentioned, or any part thereof, then the said C. D. and his assigns, are hereby authorized to take possession of the above described goods, chattels, and property, [or, *mentioned in the schedule hereto annexed*,] and advertise and sell the same

at public sale, or so much thereof as will be necessary to pay and satisfy the principal sum whether then or thereafter payable, with the interest thereon which shall be due at the time of such sale, and all costs, charges, and expenses attending said sale; paying the surplus, if any there be, to said A. B., or his representatives, on demand.

And it is agreed that said A. B. shall remain in possession of said property till condition broken; but said C. D. may at his pleasure take and remove the same, and may enter into any buildings or premises of said A. B. for that purpose.

Witness my hand and seal, this — day of —, 1858.

A. B. (L. S.)

Executed in presence of

[Must be recorded.]

4. *Mortgage of Personal Property to secure Endorser.*

THIS INDENTURE of two parts, made this — day of — A. D. one thousand eight hundred and fifty —, by and between C. D., of —, of the first part, and C. G., of —, of the second part, Witnesseth,

That the said G., at the request of the said D., has agreed to endorse certain notes of hand for his accommodation, and the said D. has agreed to give the said G. security against any loss or damage that may befall him by reason of such endorsements.

Wherefore, in pursuance of such engagements, the said C. D. in consideration of the premises, hereby bargains, sells, assigns, transfers and sets over unto the said C. G., all the goods, chattels, tools, machinery and effects, in the annexed schedule or bill of particulars mentioned, whereof the said D. does avouch himself to be the true and lawful owner.

To hold the said premises unto the said G. and his executors, administrators and assigns.

Provided nevertheless, that if the said C. D., shall from time to time pay and discharge all the promissory notes which the said G. may endorse for his accommodation, as they shall respectively become due and payable, and shall finally secure and indemnify the said G. and his personal representatives, from all costs and damage, by reason or on account of the liabilities that have been or may be assumed by him in pursuance of the agreement aforesaid, then this instrument shall be void.

Provided also, and it is hereby further agreed, that until default by the said D., of or in the payment of any of the said notes, it shall be lawful for the said D., to retain possession of the said chattels, and effects, and to use and enjoy the same without any denial or molestation by the said G., or his representatives.

And the said G., for himself, and his representatives, does hereby covenant to and with the said D., and his representatives, that in case of his taking possession of the said property, for a breach of the condition aforesaid, he will advertise and sell the same at public vendue, to the highest bidder, and after indemnifying himself fully from the proceeds of such sale for all the liabilities assumed by him as aforesaid, whether the notes are then payable or not, will account

for and pay over the balance of the said proceeds to the said D., or his representatives or assigns on demand.

In witness whereof the said parties have set their hands and seals to this and another instrument of like tenor and date.

C. D. (L. s.)
C. G. (L. s.)

Executed in presence of

[Must be recorded.— See pages 50, 51.]

5. Mortgage Deed of Real Estate.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and State of —, merchant, in consideration of — dollars, to me paid by C. D., of —, in the county of —, and State of — physician, (the receipt whereof is hereby acknowledged,) do hereby give, grant, bargain, sell, and convey unto the said C. D., his heirs and assigns, a certain parcel of land &c., situate in —, described and bounded as follows, to wit: [*here state how bounded*], with all the privileges and appurtenances thereto belonging.

To have and to hold the aforegranted premises, to the said C. D., his heirs and assigns, to his and their use and behoof forever.

And I, the said A. B., for myself, my heirs, executors and administrators, do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises, that they are free from all incumbrances, — that I have good right to sell and convey the same to the said C. D., his heirs and assigns forever as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons.

Provided nevertheless, That if the said A. B., his heirs, executors, or administrators, shall pay unto the said C. D., his executors, administrators, or assigns, the sum of — dollars in — years from the day of the date of these presents, with interest on said sum, at the rate of — per centum per annum, payable semi-annually,* then this deed, as also a certain promissory note,† bearing even date with these presents, signed by the said A. B., whereby for value received he promises to pay the said C. D. or order, the said sum and interest at the times aforesaid, shall both be absolutely void.

And provided also, that, until default of the payment of the said sum, or interest, or other default as herein provided, the mortgagee shall have no right to enter and take possession of the premises.

In witness whereof, I, the said A. B., have hereunto set my hand and seal this — day of —, in the year of our Lord eighteen hundred and fifty —

A. B. [L. s.]

Signed, sealed and delivered in presence of

[Must be acknowledged and recorded.]

* To be inserted if required:— and, until such payment, keep the buildings standing on the land aforesaid insured against fire, in a sum not less than — dollars, for the benefit of the said mortgagee and his executors, administrators, and assigns, at such insurance office in —, as the said C. D. shall approve, and also pay all taxes levied or assessed upon the said premises.

† If the mortgage be given to secure the payment of a bond, then say instead of "a certain promissory note," "a certain obligation or bond."

6. Mortgage Power of Sale.

[After the close of the fourth paragraph in No. 5, add:—]

And provided also, that at any time after [here state the time, if weeks or months'] continuance of any breach of the foregoing condition, the grantee—, or [his or their, as the case may be] Executors, Administrators, or Assigns, may sell and dispose of the granted premises, with all improvements that may be thereon, at public auction; such sale to be in said — of —, without further notice or demand, except giving notice of the time and place of sale, — in each of three successive weeks, in — newspaper— printed in the — aforesaid: And in his or their own names, or as the attorney— of the grantor—, for that purpose by these presents duly authorized, convey the same, absolutely and in fee simple, to the purchaser or purchasers accordingly; And shall hold and apply the proceeds of such sale — first, to pay and reimburse to said grantee— all sums of money then secured by this Deed (whether then or thereafter payable), together with interest, and all costs and expenses, including all sums paid by said grantee— for insurance of the premises; and, secondly, to pay the surplus, if any, to the grantor— or — assigns; or in case such sale shall be made under any decree of or proceeding in any court, then to the court by which such sale shall have been decreed; And such sale shall forever bar the grantor—, and all persons claiming under —, from all right and interest in the premises, at law or in equity. It being mutually agreed, that the said grantee—, or — Assigns may bid and be the purchaser at said sale, and that no other purchaser shall be answerable for the application of the purchase money.

And provided also, that until some breach of the condition of this deed, the grantee— shall have no right to enter and take possession of the premises.

In witness whereof, I the said A. B. and Sarah my wife, in token of her release of all right of dower and homestead in the granted premises, have hereunto set our hands and seals this — day of —, in the year &c.

Signed, sealed and delivered in presence of

A. B. [L. s.]
S. B. [L. s.]

[Must be acknowledged and recorded.]

NOTE.—Incumbrances, &c. must be stated as on page 40, and if grantor be married the wife should join her husband in the conveyance of the estate, and therein releasing her claim to dower, and also to homestead, if there be one.

Extension of Mortgage.

THIS AGREEMENT made between A. B. of —, and C. D. of —, witnesseth—

That, whereas, the said B is the holder of D's note, whereby he promises to [recite the note], which note is secured by said D's mortgage deed, dated —, recorded in —, vol. — page —, on which said note and mortgage there remains unpaid the sum of — dollars, with interest at — per cent from —.

Now, the said D agrees with the said B, that the interest on the aforesaid sum of — dollars shall, at all times hereafter, be punctually paid to said B, or his assigns, on the — day of —, in every year, till the payment of the principal; and that the said principal sum of — dollars shall be paid to said B, or his assigns, in — years from the date hereof and not sooner; and the said B agrees to extend the time of payment accordingly.

It is also agreed that this instrument shall not invalidate or impair the efficacy of said note and mortgage.

In witness &c.

Note.—If the mortgagor has sold the estate, his grantee should join to show his assent.

LAW OF MORTGAGE.

Conveyance of real estate by mortgage.—Every contract for securing a debt by a conveyance of lands and tenements, is deemed a mortgage as between the parties; and the borrower will be entitled to redeem his property, although the conveyance is, on the face of it, absolute. In order, however, to protect both mortgagor and mortgagee against subsequent purchasers and mortgagees, it is necessary, that the fact that the conveyance is intended as a mortgage, *be recorded* with the deed of conveyance.

To constitute a Mortgage, a particular form is not necessary, though customary. The common form is a *warranty deed* [see form of deed at page 40], containing and subject to, the proposed condition.

Where a deed, absolute in its terms, was duly executed, and on the back of it was endorsed a writing in the form of a *condition* to a mortgage, without date, seal or signature,—it was held that the deed was a mortgage. 5 Pick. 181.

In a Court of Chancery, whenever it appears from written evidence, that the land is conveyed to secure the payment of money, the conveyance will be treated as a mortgage.

An absolute deed of land, and a bond, made at the same time, to reconvey, upon the payment of a sum of money, though unaccompanied by any collateral personal security for such payment, constitutes a mortgage.

Fixtures, and additions in the nature of fixtures, which are placed in a building by a mortgagor, after he has mortgaged it, become part of the realty, as between him and the mortgagee, and cannot be removed or otherwise disposed of by him while the mortgage is in force. 4 Met. 306.

The Statute of Limitations does not affect Collateral Security—Where the note is barred by the Statute of Limitations, yet, if it has not been paid, the mortgagee has his remedy on the mortgage. 19 Pick. 535.

So where negotiable notes are secured by a mortgage, and the mortgagee assigns the notes without the mortgage, this does not cancel the mortgage; but the mortgagee will hold it as trustee for the holders of the notes. 4 Pick. 131.

Rights of the Mortgagor.

Upon the execution of a mortgage, the legal estate vests in the mortgagee, subject to be defeated upon performance of the conditions of the mortgage. But, as between mortgagor and mortgagee, and so far as it is necessary to give full effect to the mortgage as a security for the performance of the condition, a mortgage is considered an absolute conveyance in fee; yet, for all other purposes, it is considered, especially until entry for condition broken, as a mere charge or incumbrance, which does not alienate the estate of the mortgagor. The mortgagor is not, therefore, liable for rent while he remains in possession; and he has the right to lease, sell, make a second mortgage, and in short to deal in every respect with the property as owner, so long as he does not in any way affect or impair the rights of the mortgagee. So the property may be attached and taken for the mortgagor's debts, subject to the rights of the mortgagee.

The mortgagor, until failure of payment of principal or interest, is to possess and enjoy the property mortgaged; and though failure be made, he and his representatives have a right to redeem the mortgage, which in law is termed the equity of redemption. In some States a reasonable period is allowed, in which to redeem, or regain the estate, in others, the time varies from one to twenty years from the breach of the condition of the mortgage. The person entitled to redeem shall pay or tender to the mortgagee the whole sum then due, and payable on the mortgage, and shall perform, or tender performance of every other condition contained therein, and all costs which may have been incurred in any suit for recovering the

premises; and if the mortgagee shall not accept the same, and discharge the mortgage, the mortgagor may recover possession by a bill in equity.

Not only the mortgagor himself, but his heirs, personal representatives, and assigns, may redeem the mortgage. So also may a widow entitled to dower, a jointress, a tenant by the curtesy, a remainder man and reversioner, a judgment creditor, a purchaser of the equity at an execution sale, a second mortgagee, and, in short, every person who has an interest in or lien upon the land.

Redemption of Estate.—Most of the States regulate, by statute, the time within which a mortgaged estate may be redeemed or foreclosed. In *Massachusetts, Rhode Island, and Maine*, the mortgagor has three years in which to redeem the property. In *New York* one year by paying the sum bid, with interest on that sum from the time of sale at the rate of ten per cent a year.

In *Ohio*, a mortgagor has a reasonable period, (before foreclosure,) to redeem the estate, on payment of the debt and all equitable charges, &c.

It has become the practice, of late years, to insert in a mortgage an *absolute power of sale*; by which the mortgagee, in case of breach of condition, is enabled to sell, and thus destroy the right to redeem in the mortgagor, and all claiming under him. [See Form at page 55.]

Rights of the Mortgagee.

In the absence of any statute, or of any agreement in the mortgage, the mortgagee is entitled to immediate possession of the mortgaged property. It is usual, however, to insert a clause in the mortgage, "*providing that it shall be lawful for the mortgagor to retain possession until breach of condition*;" in which case, the mortgagee is not entitled to take possession, until after breach of condition.

If a mortgage is given to secure the payment of several notes, the non-payment of the first note when it becomes due, is a breach of the condition. The mortgagee, if he take possession of the property, is bound to take reasonable care of it, account for the actual receipts of rents and profits, and apply them to the reduction of the principal and interest due on the mortgage. He is allowed for necessary expenditures in keeping the estate in repair; and in most of the States, he is entitled to a reasonable compensation for his services.

Discharge of Mortgage to be entered on the Record.

In many States, mortgages may be discharged by the mortgagee acknowledging payment thereof by an entry on the mortgage, signed and sealed in the presence of one or two witnesses, which entry must be also recorded in the margin of the record in the registry of deeds, or wherever the mortgage is recorded.—The following Form of Discharge is used in *Massachusetts, Ohio*, and several other States.

B —, MAY 1, 1859.—I acknowledge to have received full satisfaction for the debt secured by this mortgage, and do therefore hereby cancel and discharge the same. C. D.

The Mortgage can also be discharged by a Deed of Release.—See p. 63.

Satisfaction of Mortgage in New York.

I, A. B., of the town of —, and county of —, do hereby certify, That a certain mortgage, bearing date the — day of —, in the year —, made and executed by C. D. to me, A. B., and recorded in the office of the Clerk of the county of —, in Lib. — of Mortgages, upon page —, on the — day of —, in the year —, is paid, satisfied, and discharged. Dated the — day of —, 185—. A. B.

In presence of

[Should be acknowledged and Recorded.]

NOTES, DUE BILLS, RECEIPTS, ORDERS, &c.

Judgment Note.

\$ —

B —, July 1, 185—.

*Sixty days after date, I promise to pay C. D. or bearer, Three Hundred and Ten Dollars, value received. And in case of default of payment of the same when due, I hereby empower C. D. or any attorney appointed by him, to appear for me, and to confess judgment before any Court of competent jurisdiction in the State of — * for the above sum and costs, with release of errors, waiving the right of appeal.*

Witness my hand and seal, this — day of —, A. D., 1855.

In presence of

A. B. [L. s.]

* The words, "*before any justice of the peace*" can be substituted for the above expression in italics, where the statute admits of it. See below.

Any person who is by law capable of binding himself by a common bond, may enter into a recognizance, (that is, make an acknowledgment, or confession) of any debt, and thereby subject his person, goods, and estate to be taken for such debt. — An agent has precisely the power of his principal, in all things prescribed by the power of attorney.

In Massachusetts the Statute requires that an acknowledgment of debt be taken before the Court of Common Pleas in term time, or before the Clerk of the Court during vacation, or before any Justice of the Peace with like effect, if the execution is not to be levied on land. If the execution is to be levied on land the acknowledgment must be recorded with the Clerk of the Court within ninety days of the date. The person making the acknowledgment must be known to the judge, clerk, or justice, or his identity proved. Fees of the Clerk for acknowledging and recording 50 cents, for recording only, 25.

In New York, a confession of judgment may be given as security for an existing debt or for future advances, or to secure an endorser. The acknowledgment must be sworn to before a Justice of the Peace, and filed with the county clerk, who will enter a judgment of the Supreme Court for the amount.

In Pennsylvania, judgment may be confessed without the filing of a declaration, the prothonotary being empowered to enter judgment on the presentation of a bond, bill, or note containing a power of attorney. — In this State the words "*without defalcation*" are required in notes; and the residences of the promisor and endorsers.

A confession of judgment prevents the expenses and delays growing out of an action at law; and if goods are levied on, they may probably be held by the creditor, though the debtor subsequently avail himself of the insolvent law.

The above form of note prevails extensively in some of the Southern and Western States, where great delay and expense occurs in obtaining judgment.

NEGOTIABLE NOTE.

B —, MARCH —, 18—. For value received I promise to pay A. B., or order, — dollars in — months [or days].

\$ —

C. D.

No. — Due —.

Joint and several Note.

\$ —

D —, APRIL —, 18 .

— months [or days] after date, we jointly and severally promise to pay G. H., or order, — dollars, value received.

A. B.

C. D.

Note — with Witness.

\$ —

E —, MAY —, 18—.

For value received I promise to pay A. B., or order, — dollars, in — months [or days] from date, with interest, at the rate of — per centum per annum.

In presence of

A. B.

Note on demand—with Interest.

§——

F——, JUNE —, 18—.

For value received I promise to pay A. B., or order, ——— dollars on demand, with interest,

C. D.

NOTES—A negotiable note taken in payment of a debt is a discharge of the debt. To be negotiable, it must be made payable to *payee* or *order*, or to *bearer*. If made payable to several persons, not co-partners, it must be endorsed by each person. A note may be endorsed so as to preclude all recourse to the endorser, as follows: *B. B. without recourse*. Any person may be authorized to make a demand for payment. If the maker of a note be absent, the demand may be presented to his agent, or left at his place of business, or house. If he is absent from the state, and has left no agent, and no known place of business, and cannot, by diligent inquiry be found, notice need not be proved. All notes on time are allowed three days grace, (if a note is made payable three months from Jan. 1, it is due April 4th,) and if not paid before the expiration of that time, the endorsers, if they reside in the vicinity, must be immediately notified of the fact, but if they reside at a distance, the notification may be sent by the quickest mode of conveyance, or the earliest post, or the endorsers will not be held liable. If a letter be sent to the endorser by post, and it miscarry, and the endorser not receive it, still the notice is sufficient. Every person receiving notice should immediately give a fresh one to the persons preceding him, if he wishes to make them liable.

Each endorser becomes liable to all subsequent holders. If the note be paid and taken up by the last endorser, he may again transfer it to a new endorsee, who may maintain an action upon it in his own name against any prior party. But if paid by any other endorser than the last, the note is no longer negotiable.

No particular form of words are essential to be used in the notice; but it must contain an intimation that payment of the note has been refused by the maker.

Notes on demand. In Massachusetts a demand for payment must be made within sixty days, without grace, and if not paid, the endorser must be immediately notified, or the holder of the note loses his claim on the endorser. In other states a demand for payment must be made within a reasonable time, in order to subject the endorser. To hold the endorser he should have received notice immediately after the first demand, and refusal of payment.

NOTE.—See other Forms of Notes and Indorsements, and the whole Law in relation to Notes, Indorsements, Bills of Exchange; Presentment for Acceptance; when not Accepted; Liability of Acceptor; Effect of an Indorsement; Presentment for Payment; Notice to Endorsers; when want of Notice is excused; Form of Notice, &c., in "*Trader's Guide, and Business Man's Legal Companion*"—a book which should be in the hands of every man who transacts any kind of business.

FORM OF AN ORDINARY INLAND BILL OF EXCHANGE, OR DRAFT.

§——

B——, Nov. —, 18—.

Three months* after date, pay to the order of G. W., One Hundred Dollars, value received, and charge the same to our account.

To E. F. Merchant, N. Y

C. D. & Co.

FORM OF A FOREIGN BILL, OR SET OF EXCHANGE.

§——

D——, MAY —, 18—.

Sixty days* after sight of this **FIRST** of Exchange, (Second and Third of the same tenor and date, not paid,) pay to the order of C. D. & Co., in Liverpool, the sum of——Dollars, value received, and charge the same to account of

To Mr. E. F. of C——.

A. B.

* This admits of the following variations, according to circumstances:—Instead of "three months," or "sixty days," it may be "at sight," or at such a time "after sight," or at such a specified time, or on "demand."

The various parties upon a bill, besides the acceptor, indorsers, drawers, and others, become liable for its payment on failure of the acceptor. The acceptor's failure to pay is commonly said to be an act of dishonour. If the drawee refuse acceptance, this likewise is dishonour, and is held to be such a prospective refusal of payment as entitles the holder to claim immediately from the drawer, or, if there be an indorser, on that indorser, who has recourse on the drawer; but to entitle him thus to recur on the original parties, there are obligations on the holder, without performing which he is held not to have duly negotiated. He must present the bill for acceptance and for payment on the proper occasion. The holder must, where a bill is payable within a certain period after sight, present it for acceptance within a reasonable time. The drawee may retain the bill twentyfour hours, after which time if he refuse to return it, or has destroyed it, he shall be deemed to have accepted it. The holder must give immediate notice of the non-acceptance or non-payment of the bill to the drawer, and to every person who would be entitled to bring an action on it after paying it. If he fail to do this, such parties are discharged. He should also in most cases protest it.

A *Check* is a written order, and it is the duty of the person receiving it, whether from the drawer or an indorser, to present it for payment on the day on which he receives it, if it come to his hands early in the day, and otherwise on the day following; if he be at a distance, he should despatch it within the same time, if the Post Office arrangements admit of his doing so, otherwise the holder may not (in case of the Bank becoming insolvent) recover of the drawer. Legal rules on these points cannot, however, be strictly laid down, and the above statements must be held as of a merely precautionary nature.

RECEIPT.

G ———, JULY —, 18—. Received of A. B. ——— dollars, in full of all demands. C. D.

Receipt for Money received of a third Person.

H ———, AUG. —, 18—. Received of A. B., by the hand of C. D., ——— dollars, on account. E. F.

Receipt for Interest due on a Bond.

B ———, SEPT. —, 18—. Received of W. R., the sum of ——— dollars, in full for one year's interest of ——— dollars due to me the ——— day of ——— last, on bond by the said W. R., which sum is endorsed [or, shall be] on said bond. E. W.

Receipt for Money due on a Bond.

B ———, — Nov. 18—. Received of A. B., the sum of ——— dollars, due to me the ——— day of ——— last, on bond by the said A. B., to be endorsed thereon. C. D.

BORROWED MONEY DUE BILLS, OR MEMORANDUM CHECK.

I ———, SEPT. —, 18—
Borrowed and received of A. B., ——— dollars, which I promise to pay on demand with interest. C. D.

Due Bill.

Due, on demand, to A. B., or bearer, for ——— dollars, [to be paid in merchandize,] value received. N. O.

ORDER.

Mr. A. B. will please pay to X. Y. or bearer, ——— dollars [in merchandize,] and charge the same to our account. N. O.

POWERS OF ATTORNEY.*

General [or common] Form of Letter of Attorney.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, county of —, and state of —, do hereby make, constitute and appoint C. D., of —, my true and lawful attorney, for me, and in my name, to [here describe the things to be done,] hereby ratifying and confirming whatsoever my said attorney shall lawfully do, or cause to be done in the premises.

Witness my hand and seal, this — day of —, A. D. 18 —.

A. B. [L. s.]

Executed in presence of

Power of Attorney to Sell Stock.

KNOW ALL MEN BY THESE PRESENTS, That for value received, I, A. B., of —, do hereby make, constitute, and appoint irrevocably, C. D., my true and lawful attorney, with power of substitution, for me and in my name, to sell, assign, and transfer, unto any person or persons whatsoever, sixteen shares now standing in my name, in the Capital or Joint Stock of the — Railroad. And my said attorney is hereby fully empowered to make and pass all necessary acts for the said assignment and transfer.

Witness my hand and seal, &c.

A. B. [L. s.]

Executed in presence of

Substitution.

For value received, I appoint irrevocably, E. F. as my substitute, with all the powers above given to C. D.

Witness my hand and seal, &c.

C. D. [L. s.]

Executed in presence of

*1. If a letter of Attorney is to be used in another State than that where the principal resides, it should be acknowledged before a Commissioner, Notary Public, Judge of a Court, or justice of Peace, &c. If in a foreign country, it should be acknowledged before a minister or consul.

2. A principal is bound by every act of his agent or Attorney done within the scope of the authority given him.

3. Powers of Attorney are taken to be in force till notice of revocation, or the death of the party giving the same.

4. A married woman may lawfully act as her husband's attorney, if duly empowered by a letter of attorney from him.

5. Where a conveyance is made by an attorney, he should grant it in the name of the principal, and put the principal's name, and seal to the deed, and acknowledge it before the magistrate to be the deed of the principal.

† If the Power is given to collect Debts, say ["ask, demand, sue for, collect, and receive, all such sum and sums of money, debts, rents, dues, accounts, and other demands whatsoever; which are or shall be due, owing, payable and belonging to me, or detained from me, in any manner whatsoever, by C. C., of —, county of —, state of —, his heirs, executors, and administrators, or any of them; (or by any person or persons residing or being in the state of —;)]"]

If the Power relates to Insurance, say ["effect insurance on —, with the — Fire [or, Marine] Insurance Company, in —, on such terms as he shall deem fit; and I hereby empower him to sign any application for said Insurance, representation of the condition and value of said property, articles of agreement, promissory note—, and all other papers that may be necessary for that purpose; and also to cancel and surrender any policy he may obtain, and on such cancelling, or the expiration thereof, to receive any dividend, return premium or deposit that may be due, and on such receipt full discharge to give therefor,"]

Power of Attorney to Sell and Lease Lands.

KNOW ALL MEN BY THESE &c. [*in common form*] to [*grant, bargain, sell and convey, to any person or persons, who may desire to purchase the same, the — quarter of section number —, in township number — north of the base line, in range number — east of the — principal meridian in the State of —,*] and for me and in my name to make, execute, acknowledge, and deliver, good and sufficient deeds and conveyances for the same, either with or without covenants and warranty;* giving and granting to my said attorney full power and authority to do all acts necessary and proper to be done in the premises, in as full and ample a manner, as I might or could do, if personally present. And I do hereby ratify and confirm all the acts of my said attorney lawfully done in the premises.

Witness my hand &c.

A. B. (L. s.)

Executed in presence of

[To be acknowledged.]

Power of Attorney [or Proxy] to Vote for Directors.

BE IT KNOWN, that I, A. B., of — do appoint C. D., of —, to be my proxy, for me and in my name, to vote at any election of directors [or trustees, &c.,] of the [*describe the Company or Society by its corporate title*] and on all other matters which at any regular meeting of the stockholders may properly come before them.

Witness my hand and seal, this &c.

A. B. [L. s.]

Signed in presence of

Power to receive Dividends.

Please pay A. B. all dividends *due* on all Shares in your Corporation standing in my name.

To CASHIER OF — BANK.

C. D.

B—, Jan. 1, 185—.

By inserting after the word "*due*" in the above, the words "*or to become due,*" the Order becomes a standing one.

If to Railroad, direct "To Treasurer of B— Railroad."

Revocation of a Power of Attorney.†

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of B., in and by my letter of attorney, bearing date the — day of —, 1856, did appoint C. D., of B. my attorney, to [*here copy the language of the letter of attorney,*] as by the said letter of attorney will appear: Now, know ye, that I, the said A. B., do by these presents revoke, countermand, annul, and make void the said letter of attorney, and all power and authority thereby given, or intended to be given, to the said C. D. In witness whereof, I have &c. A. B. (L. s.)

Executed in presence of

*If the land is to be leased, say, ["And until the sale thereof to sign, seal and interchange to, and with any person with whom said C. D. may contract, and for and upon such terms as said C. D. may agree, leases of the whole or any part of the aforesaid land: hereby authorizing my said attorney to receive the rents, which may become due on said leases, and to receipt for the same in my name, he accounting to me therefor;"]

† A Power of Attorney is revocable at pleasure, and all persons interested should have notice of the revocation. But if the authority is coupled with an interest it is not revocable, though it be not so stated in the letter.

RELEASES.

A General Release.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of B., in the county of D., in consideration of ——— dollars, to me paid by C. D., of E., do hereby for myself, my heirs, executors, administrators, and assigns, release, and forever discharge the said C. D., his heirs, executors, and administrators, of and from all debts, demands, covenants, actions and causes of action, which I now have, in law or equity, or which may result from the existing state of things from any and all contracts, liabilities, doings and omissions, from the beginning of the world to this day. In witness whereof, &c.

Executed in presence of

A. B. [L. s.]

Release of a Lease, Contract, Note, Bond, &c.

KNOW ALL MEN BY THESE PRESENTS, That, I, A. B., of G., in consideration of ——— dollars, to me paid by C. D. of G., do for myself and my heirs, release and forever discharge the said C. D. and his heirs, from all claims and demands, which now exist, or which may hereafter accrue in my favor, from or concerning a lease made between me and the said C. D. on ———, wherein I leased to the said C. D. an estate situated in ———, for the term of ——— years, on certain terms and conditions, in said lease provided. [or if it be a note of hand, bond, contract, or other covenant, describe it particularly, instead of the above description of Lease.]

In witness whereof, I have hereunto set &c. A. B. [L. s.]

Executed in presence of

Deed of Release of Dower.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. of B., in consideration of *one dollar* to me paid by C. D. of B., do hereby release and forever quit-claim to the said C. D., his heirs and assigns, all my right of dower in and to the following described real estate, situate in [here describe the estate,] [of which my late husband E. B. was heretofore seized]. To have and to hold the same to the said C. D., his heirs and assigns forever.

In witness whereof, I have hereunto &c. A. B. [L. s.]

Executed in presence of

[Should be acknowledged and recorded.]

Quit Claim Deed, Releasing Mortgaged Premises.

KNOW ALL MEN BY THESE PRESENTS, That I,* A. B., the mortgagee named in a certain mortgage deed given by C. D. to A. B., to secure the payment of ——— dollars; dated ———, recorded in ——— vol. — page—, in consideration of ——— dollars, to me paid by C. D., the mortgagor, do hereby release, and forever quit claim to the said C. D., his heirs and assigns, all my claim and title in and to the mortgaged estate therein mentioned; [having received full satisfaction for the debt thereby secured.] †

Witness my hand and seal, this ——— day of &c. A. B. (L. s.)
Executed and delivered in presence of

* If discharged by the assignee, "say, E. F., assignee of."

† If the debt has been actually paid, and not merely the security changed.

Acknowledged, if Real Estate,—and Recorded.

FORMS OF PETITIONS.

Petition for Change of Highway.

To the County Commissioners for the County of W.

The undersigned respectfully represent, that the public highway from the house of A. B., in G., passing the house of C. D. to the house of E. F., in G., is narrow, crooked, indirect and inconvenient; wherefore your petitioners request your honorable Board to view the premises, and widen, straighten, or new locate said road, and discontinue such parts of the highway as may be useless; or make such alterations and improvements as shall appear to your honors necessary.

And your petitioners as in duty bound will ever pray.

[Signatures.]

Petition for laying out a Road.

To the County Commissioners for the County of W.:

Your petitioners, inhabitants of the town of G., would respectfully represent, that the public convenience and wants require that a road and highway should be laid out and constructed, beginning at B, in the town of C., and leading in a — direction through C. to the town of D. — Your petitioners would therefore ask that your Honors would view the premises, and locate and construct said road and highway, according to the laws in such cases made and provided. And as in duty &c.

[Signatures.]

NOTE.—The termini, or places where the road commences and ends, should be particularly described, but not the lots of land through which the road is to pass, as this would confine the commissioners to that particular route.

TO THE LEGISLATURE.

To the Honorable the General Assembly of the State of M. [or General Court] or [Senate] or [House of Representatives] or [the Congress of the U. S.] the undersigned respectfully represents, That, &c.

TO THE AUTHORITIES OF A CITY [OR TOWN].

To the Honorable the Mayor, Aldermen, and Common Council of the City of B. or [the Selectmen of the Town of B.] the undersigned respectfully represents &c.

DIRECTIONS FOR MAKING A WILL.

WHO MAY MAKE A WILL. All persons of sound mind, except infants and married women, may dispose of their REAL property by will. A married woman may do so with the assent of her husband; and if she possess a deed of settlement of her estate, prior to her marriage, she may retain this power and execute it after marriage. In some States she may dispose of property by will, which has been left to her sole use beyond the control of her husband.

A person making a will should be careful to give his christian and surname, his place of abode, trade, &c. Legatees should also be properly described.

THE NATURE AND EXECUTION OF WILLS. Wills are of two kinds, WRITTEN and UNWRITTEN. The latter have now become very unusual, being liable to great imposition. In some States, as in Massachusetts and New York, an UNWRITTEN will, bequeathing personal estate, is only valid when made by a soldier in actual service, or by a mariner while at sea.

A will of any kind of property must be in writing.

The will, or codicil, should be signed at the foot or end thereof by the testator. If he does not sign, it must be signed by some person in his presence, and by his direction.

The signature must be made, or acknowledged, by the testator, in the presence of witnesses present at the same time.

In Massachusetts, New Hampshire, Maine, Rhode Island, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, Georgia, and all the other States, the attestation is good if signed by three witnesses. In Delaware, Virginia, Ohio, Illinois, Indiana, Missouri, Tennessee, North Carolina, two witnesses only are required. In New York, two are necessary, who must write opposite their names their place of residence, — penalty for neglect \$30.

Lastly, the LEGAL number of witnesses must attest and subscribe the will, or codicil, in the presence of the testator, and attest that the will was signed, or his signature acknowledged by the testator, in their presence.

WITNESSES TO A WILL. They should not be persons who, on account of having been convicted of any infamous crime, are disqualified from giving evidence in a court of justice. Nor should they be legatees under the will, or codicil; nor any way interested in making the will. They should also be persons of sufficient intelligence and understanding. Legacies to an attesting witness, or his wife, or her husband, are void. But creditors and executors can be attesting witnesses. Alterations in wills must be made in the same way as a will is made, that is, the will must be again witnessed and signed.

CODICIL. A codicil is a supplement or addition made to a will by the testator, adding to, explaining, or altering some part of his former disposition. It may be written on the same paper, or affixed to and folded up with the will; or it may be written on a different paper, and deposited in a different place.

In general, the law relating to a codicil is the same as that relating to wills, and the like guarantees of signature and attestation are required.

Though a man can properly make only one will, he may make as many codicils as he pleases, and the first is equally valid with the last, if not contradictory.

LEGACY. A Legacy is a bequest, or gift of money, goods, or chattels, by will; the person to whom it is given is called the legatee; and if the gift is of the residue of an estate, after the payment of debts and other legacies, he is called the residuary legatee.

In case of a deficiency of assets to pay the debts, all the general legacies must abate proportionally. So, if the legatees have been paid, they are bound to refund a rateable part.

General conditions imposed on legatees not to marry, are void, as immoral, by tending to prevent the multiplication of the species.

REVOCATION OF A WILL. A will may be revoked at the pleasure of the testator. He may burn tear, cancel, or obliterate it, but an obliteration of a part is a revocation of only that part. Marriage and the birth of a child operate as a revocation, provided the wife and child were unprovided for. A second will is also a revocation of the first. The marriage of a woman revokes a will previously made by her. A codocil revokes a will if contrary to it.

WILL.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in the county of —, and state of —, merchant, being of sound disposing mind and memory, do make and publish this my last Will and Testament.

1st. I give and bequeath to my son C. B. one hundred dollars.

2d. I give and bequeath to my sons D. B. and E. B., five hundred dollars each.

3d. I give and bequeath to my honored mother five hundred dollars.

To be paid to them respectively within one year after my decease.

4th. I give and bequeath to my beloved wife, N. B., all my household furniture, wearing apparel, and all the rest and residue of my personal property, (after payment of my debts and legacies.)

5th. I give and devise to my daughter, G. H., wife of B. H., of —, the lot of land, with the building thereon, situate in the town of — in the county of — [bounded as follows]. To have and to hold the said premises with the appurtenances, to her, the said G. H., to her sole and separate use, free from the interference or control of her husband, and to her heirs and assigns forever.

6th. I give and devise to my eldest son F. B., his heirs and assigns, all my homestead farm, situate in the town of B., in the county of M., whereon I now live. To have and to hold the same to him, the said F. B., and his heirs and assigns forever.

7th. I give and devise to my beloved wife, N. B., all the rest and residue of my real estate,—together with any and all estate, right or interest in lands, which I may acquire after the date of this Will—as long as she shall remain unmarried, and my widow; but on her decease or marriage, the remainder thereof I give and devise to my said children, and their heirs, respectively, to be divided in equal shares between them.

8th. I ordain and appoint my brother, R. B., as executor of this my last Will and Testament.

* If a testator in his Will makes provision for his wife, declaring the same to be instead of dower, the wife may have her election (within a specified time—in Massachusetts it is six months) to accept the provisions of the Will, or claim her dower at law, but she cannot have both. If the provisions in the Will are not declared to be instead of dower, she will hold both.

In testimony whereof, I have hereunto set my hand and seal, and publish and declare this to be my last Will and Testament in the presence of the witnesses named below, this — day of —, in the year —.

A. B. [L. s.]

Signed, sealed, published, and declared by the said A. B., as and for his last Will and Testament, in presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

L. M.
O. P.
G. H.

If the Will be signed by a third person for the testator, the attestation should be thus:

Signed by the said E. F. in our presence and in the presence of the said A. B. and by his express direction, and by the said A. B. at the same time published and declared as his last will and testament, in the presence of the said E. F. and of us, who each in the presence of the other, and of the said A. B. and of the said E. F. have hereunto set our hands as subscribing witnesses.

The manner of signing and attesting Wills in New England and many of the States, is similar to the above. In New York, it is as follows:

The above instrument was now here subscribed by A. B., the testator, in the presence of each of us; and was at the same time declared by him to be his last Will and Testament: and we, at his request, and in his presence, sign our names thereto, as attesting witnesses.

D. F., residing in Utica, — County.
G. H., residing in Utica, — County.

Codicil.

WHEREAS, by my last will and testament, dated the — day of —, 18—, I gave to my daughter J. W., [*here mention the legacy.*] I do hereby, by this present writing, which I declare to be a Codicil to my said Will, revoke the said legacy, and give and bequeath the same to my son S. W., Jr. I also give and bequeath to my nephew G. E. the sum of — and to my niece H. E. the sum of —. And I hereby ratify and confirm my aforesaid Will in all respects, except so far as changed or altered by this Codicil.

In testimony whereof, &c., [same as will.]

A. B. [L. s.]

Signed, sealed, and declared by the said A. B. to be a Codicil to his last will and testament, in the presence of [same as will.]

EASEMENTS.

No person shall acquire any right or privilege of way, nor *any other easement*, from, in, upon, or over, the land of another, by the adverse use or enjoyment thereof, unless such use shall have been continued *uninterrupted*, for twenty years. The person owning the land, in such case, may give notice in writing to the person claiming or using the privilege, expressing his intention to dispute the right of way, or other easement, and to prevent the other party from acquiring such right; and such notice, being served and recorded, as hereafter provided in this section, shall be deemed an interruption of such use, and shall prevent the acquiring of a right thereto, by the continuance of the use thereof, for any length

of time whatever, after the notice aforesaid; and such notice shall be served, like an original summons in civil actions, on the other party, or his agent or guardian, if within the state; and otherwise, on the tenant or occupant of the estate, if there be any; and if not, a copy of the notice shall be affixed to the house, or to some other conspicuous part of the premises; and the service shall be indorsed and returned on the original paper, and said notice, with the return thereon, shall be recorded in the registry of deeds, for the county where the land lies, within three months after the service; and every such notice, given by the guardian or agent of the owner of the land, shall have the like effect as if given by himself. Mass. R. S. c. 60.—Law of 1852 provides that no person who has erected, or may erect a house or building near the land of another person, shall acquire a right of light and air, by mere continuance of windows overlooking his land, so as to prevent the owner of such land from erecting any building thereon [See a summary of the common law respecting Easements, in "*The Landlord's & Tenant's Assistant*," one of this series, at pp. 64-67.]

1. *Notice to Discontinue an Easement.*

To A. B. and C. D., the Heirs of Mr. J. B., deceased: Apprehending that, by lapse of time, a right may hereafter accrue to you to have the privilege of an alley, or passage-way, in and upon my lot of land on M. street, numbered 53, which you now enjoy by my sufferance, of passing to and from said street along the south side of my dwelling house, to the rear of your house on said street. Now to prevent the accruing of such right on your part, or on the part of those who may hereafter own the estate, I hereby notify you, that I claim the right of building upon and over said alley or passage-way immediately, or at any other time, or of closing up or otherwise disposing of the same, whenever I may think it best to exercise such right.

S——, ss. B——, May 12, 1857. I have this day notified the within named J. B., by leaving an attested copy of these presents at his last and usual place of abode in said B——.

H. H. G., *Deputy Sheriff.*

2. *Another Form.*

B——, May 21, 1857.

To H. T.—Sir: You are hereby notified that the proprietors of the real estate hereinafter mentioned, intend to prevent you from acquiring by adverse use, or possession, or otherwise, any right of — or other easement, over, from, in, or upon our land, situate on the westerly side of W. street in said B., being the same described in the deed of C. H., to E. D., recorded with — Deeds, Lib. —, fol. —; and we also severally notify you that it is our intention to dispute all right on your part to any — or other easement.

This notice is given to you because you are now using and enjoying, without our consent, a — from, in, upon, and over our said land,

Witness our hands this — day of —, 1857.

E. D.
C. H.

3. Admission.

I, A. B., owner of a dwelling-house and land in E. street, in the city of B., adjoining the south side of the land belonging to E. B., do hereby admit that the — upon the northerly side of my house, by means whereof — enjoyed by me in and over the estate of the said E. B., — by the sufferance and permission of said E. B., and without any intent on my part to acquire by lapse of time any right of — in and over the estate of said E. B.

Witness my hand and seal at B., this tenth day of June, A. D. 1857. A. B. [L. s.]

In presence of

S——, ss. B——, April 10, 1857. Personally appeared the within named A. B., and acknowledged the above to be his free act and deed.

Before me,

I. R. B., *Just. of the Peace*

FORECLOSURE OF MORTGAGE—ENTRY OF MORTGAGEE FOR BREACH OF CONDITION.

After breach of condition of a mortgage of real estate, the mortgagee may obtain possession by action, or make an open and peaceable entry, which possession being *continued* three years, the redemption is forever foreclosed. The mortgagor may sign a certificate or memorandum upon the mortgage deed, acknowledging the entry of the mortgagee, which certificate must be recorded in the Registry of Deeds within thirty days,—or else, a certificate of two competent witnesses to prove the entry, shall be made and sworn to before a Justice of the Peace, and recorded as above.

Certificate of Entry of Mortgagee.

This shall certify to all persons, that I, A. B., the within named mortgagor, this — day of —, A. D. 185—, do give peaceable and quiet possession of the real estate described in the within mortgage, to C. D., on account of a breach of condition therein contained, and for the purpose of foreclosing the same. A. B.

[Must be acknowledged.]

Witnesses Certificate of Entry.

B——, April 10, 1857.

We, the subscribers, hereby certify and declare that we were this day present and saw E. F., the within named mortgagee, enter in and upon the real estate described in the within mortgage, and take open and peaceable possession thereof, on account of a breach of condition therein contained, and for the purpose of foreclosing the same.

A. B.
C. D.

S——, ss. B——, April 10, 1857. Then personally appeared the above named A. B. and C. D., and severally made solemn oath that the above certificate by them subscribed is true.

Before me,

I. R. B., *Just. of the Peace.*

INFORMATION

TO PERSONS HAVING BUSINESS TO TRANSACT AT THE PATENT OFFICE.

[The following extracts from the U. S. Patent Acts, with the Directions and Forms, will enable any person to make out the necessary papers, in order to obtain a patent.]

ALL Patents are issued in the name of the U. S., signed by the Secretary of State. and countersigned by the Commissioner of Patents.

The application for a patent must be by petition to the COMMISSIONER of PATENTS.

Patents are granted for any new and useful art, machine, manufacture, or composition of matter not known, or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use, or on sale with his or their consent or allowance as the inventor or discoverer.

Any person, on application at the Patent Office, can obtain certified copies of the record, on paying ten cents for every page of one hundred words; and for copies of drawings, at the reasonable expense of making them. No answer is returned when a description of an invention is sent, and inquiry made if there be anything there like it.

The term for which a patent is granted is fourteen, but it may sometimes be renewed for seven years, by application to the Commissioner of Patents. Patents are granted to citizens of the U. S., to aliens who have resided in the U. S. one year, and made oath of their intention to become citizens, and also to foreigners who are inventors or discoverers.

Joint inventors are entitled to, and can claim a joint patent, but neither can claim one separately.

An inventor can assign his right before a patent is obtained, so as to enable the assignee to take out a patent in his own name; but the assignment must be first entered of record; the application therefor duly made, and the specification sworn to by the inventor.

The assignment may be to the whole or an undivided part by any instrument in writing. All assignments, and also the grant of the use of the patent in any town, county, state, &c., must be recorded in the patent office within three months from the date.

The law requires the payment of the patent fee, (§30,) and the filing of the specification, model and drawings, before the application can be considered; two-thirds of the fee is refunded if the application be withdrawn.

Every inventor, before he can receive a patent, shall deliver to the Patent Office a written description of his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same; and if a machine shall fully explain the principle, modes, application, and character, by which it may be distinguished from other inventions; and shall particularly point out the part, improvement, or combination, which he claims as his own invention or discovery, with duplicate drawings, where the case admits of drawings; or if a composition, furnish specimens of ingredients, and of the composition of mat-

ter, sufficient in quantity for the purpose of experiments. A model will be required in all cases which admits of a representation by model. He shall also make oath or affirmation that he verily believes himself to be the original and first inventor of the improvement in question, and that he does not know or believe that the same was ever before known or used; also of what country he is a citizen.

What is claimed as new must be distinguished from what is old. The inventor must not claim too much.

A defective specification, or drawing, may be amended at any time before a patent has issued.

The drawings should in general be in perspective, neatly executed—and such parts as cannot be in perspective, must, if important, be represented in section or detail—signed by the patentee, and attested by two witnesses—except when the specification refers to them by letters or figures. The model should be as distinct a representation of the machine, or improvement, as possible, and have the name of the inventor printed, or engraved upon it, or affixed to it. Models forwarded without a name, cannot be entered on record. Whenever the inventor is desirous of adding new improvements, like proceedings must be had as in case of original applications.

If the patentee has made his claim too broad, claiming more than that of which he was the original inventor, he may make a disclaimer, in writing, of such part, to be attested by one or more witnesses, and recorded in the Patent Office, on payment of the sum of ten dollars; and such disclaimer shall thereafter be considered part of the original specification.

The *specification* must be made in such *full, clear, and exact* terms, as to enable any person skilled in the art or science to which it appertains, to *make, construct, compound, and use* the thing patented. The part, improvement or combination which the inventor claims as his own discovery, should be particularly pointed out, and the *specification* should be *framed with letters of reference* to the *drawings*.

Any person entitled to take out a patent, who shall desire further time to perfect the invention he has made, may, by paying *twenty dollars*, file a *Caveat* in the confidential archives of the office, setting forth the design and purpose of his invention, its principal and distinguishing *characteristics, &c.*, praying protection of his right till he shall have matured his invention; which sum of \$20, in case the person filing such *Caveat* shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum required for the same.

If application shall be made by any other person, within one year from the time of filing such *caveat*, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to deposit the description, specifications, drawings and model, in the confidential archives of the office, and give notice (by mail) to the person filing the *caveat* of such application, who shall, within three months after, file his description, specification, drawings and model, if he would avail himself of the benefit of his *caveat*. If, in the opinion of the Commissioner, the specifications of claim interfere with each other, like proceedings may be had as are provided in the case of interfering applications, *provided* no opinion of any board of examiners shall preclude any person from the right to contest the same in any judicial court in any action in which its validity may come in question.

An old patent may be surrendered to correct a mistake, or error, and the fact should be stated in the application, and a new patent will be issued for the same invention, for the residue of the period. In the re-issue, the claim is subject to an examination, and if any part of it is

not original, the reissue will not be granted, unless the said part be omitted.

Protection is by the act of August 29, 1842, extended to a *new* class of objects, viz.:

To new and original *Designs*:

- for a manufacture of metal and other materials;
- for the printing of woollen, silk, cotton, or other fabrics;
- for busts, statues, or bas relief, or composition in alto or basso relievo;
- for any impression or ornament, or to be placed on any article of manufacture in marble or other material;
- for any new and useful pattern, print, or picture, to be in any manner attached to, or fixed on, any article of manufacture;
- for any new or original shape or configuration of any article of manufacture; all such designs not being previously known or used by others.

American ministers, consuls. etc., residing abroad, may administer the oath required for applicants not resident in the United States. Heretofore such functionaries were not authorized to perform this act, thus subjecting applicants, in foreign countries, to much inconvenience.

The fee required is \$15, and duration of the Patent seven years.

Application must be made by petition, and a specification of the invention or production fully described, to be signed and witnessed by two witnesses, and verified by oath.

The stamping or affixing the name of any patentee on any article without authority so to do, or the affixing the word *patent* or *letters patent*, or the stamp, mark, or device of any patentee on any unpatented article, for the purpose of deceiving the public, is forbidden under a penalty of not less than one hundred dollars.

Patentees, or their assignees, are now required to affix the date of the patent on each article vended or offered for sale, under a like penalty—thus affording to the public notice of the duration of the patent. When the article is of such a nature, that the date cannot be printed thereon, it should be affixed to the case or package containing it.

FORMS TO BE USED IN MAKING APPLICATION TO THE PATENT OFFICE.

Form of Petition.

To the Commissioner of Patents.

THE petition of A. B., of —, in the county of —, and State of —, respectfully represents:

That your petitioner has invented a new and useful [*or*, has invented a new and useful improvement on a, *or*, on the machine, &c.,] which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives, the exclusive right to the same, upon the terms and conditions expressed in the Act of Congress in that case made and provided; he having paid thirty dollars into the treasury, and complied with other provisions of the said act.

A. B.

Form of Specification.

To all whom it may concern.

Be it known that I, A. B., of —, in the county of —, and State of —, have invented a new and useful machine [*or*, improvement on a,

or, on the machine, or, composition, &c.,] for [here give the object, or title, of the invention]; and I do hereby declare that the following is a full and exact description.

[Here describe the invention with great particularity and exactness.]
See also introductory remarks.

Witness, C. D.
E. F.

A. B. [L. s.]

Form of Oath.

State of —, County of —, ss.

On this — day of —, 185—, before the subscriber, a justice of the peace in and for the said county, personally appeared the within-named A. B. and made solemn oath [*or, affirmation*] that he verily believes himself to be the original and first inventor of the [*improvement, machine, or, composition*] herein described; and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

(Signed,) J. S., *Justice of the Peace.*

Form of Withdrawal.

To the Commissioner of Patents.

SIR:—I hereby withdraw my application for a patent for improvements in —, now in your office, and request that twenty dollars may be returned to me, agreeably to the provision of the act of Congress authorizing such withdrawal.

A. B.

B—, July 5, 185—.

N. B.—If you withdraw your application, please enclose a receipt in the following form:

Received of the Treasurer of the United States, per Hon. C. D., Commissioner of Patents, twenty dollars, being the amount refunded on withdrawing my application for a patent for —.

Form of Surrender of a Patent for Reissue.

To the Commissioner of Patents.

The petition of A. B., of —, in the county of —, and State of — respectfully represents:

That he did obtain letters patent of the United States for an improvement in —, which letters patent are dated on the first day of May, 185—. That he now believes that the same is inoperative and invalid, by reason of a defective specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender, and he hereby does surrender the same, and requests that new letters patent may issue to him, for the same invention, for the residue of the period for which the original patent was granted, under the amended specification herewith presented; he having paid fifteen dollars into the treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided. A. B.

Form of Assignment of a Right in a Patent.

Whereas I, A. B., of —, in the county of —, and State of — did obtain letters patent of the United States for certain improvements in —, which letters patent bear date the 1st day of May, 1851; and whereas J. D., of — aforesaid, is desirous of acquiring an interest therein; NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of —, to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over, all the right, title, and interest which I

have in the said invention, as secured to me by said letters patent, for to, and in, the several States of —, and in no other place or places. The same to be held and enjoyed by the said J. D. for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not have been made.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 1st day of July, 185—. A. B. [L. s.]

Witness: C— D—, E— F.

Grants and assignments in whole or in part, must be recorded in Patent office within three months from date.

By the act of March —, 1848, the Commissioner of Patents is directed to charge the fees for recording assignments of patent licenses, at the following rates, viz

On all assignments, etc., which shall not contain over 300 words	\$1 00
And on all containing more than 300 and not more than 1000 words	2 00
On all assignments containing more than 1000 words	3 00

Which fees are, in all cases, to be paid in advance.

Form of Disclaimer.

To the Commissioner of Patents.

The petition of A. B., of —, in the county of —, &c.,

That he has, by assignment duly recorded in the Patent Office, become the owner of a right, for the several States of —, to certain improvements in —, for which letters patent of the United States were granted to J. D., of —, in the State of —, dated on the 1st day of May, 1851. That he has reason to believe that, through inadvertence and mistake, the claim made in the specification of said letters patent is too broad, including that of which the said patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in the aforementioned specification, which is in the following words, to wit: * * * * ; which disclaimer is to operate to the extent of the interest in said letters patent vested in your petitioner, who has paid ten dollars into the treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided.

Witness: C— D—, E— F—.

A. B. (L. s.)

When the disclaimer is made by the original patentee, it must, of course, be so worded as to express that fact.

Form of Caveat.

To the Commissioner of Patents.

The petition of A. B., of —, in the county of —, and State of —, &c.

That he has made certain improvements in the —; and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a CAVEAT, in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided, he having paid twenty dollars into the Treasury of the United States, and otherwise complied with the requirements of the said act. A. B. —, March 1, 185—.

Here should follow a description of the general principles of the invention so far as it has been completed.

It is desirable that caveats should be explicit as to the character and feature, of the invention—embrace suitable drawings or sketches; and a model if convenient. The caveat fails of its purpose, when the invention is not explained.

Form for addition of New Improvements.

To the Commissioner of Patents.

The petition of A. B., of —, in the county of —, and State of —, &c.

That your petitioner did obtain letters patent of the United States, for an improvement in the —, which letters patent are dated on the —; that he has, since that date, made certain improvements on his said invention; and that he is desirous of adding the subjoined description of his said improvements to his original letters patent, agreeably to the provisions of the act of Congress in that case made and provided, he having paid fifteen dollars into the Treasury of the United States, and otherwise complied with the requirements of the said act. A. B.

Form of Assignment before obtaining Letters Patent, and to be recorded preparatory thereto.

Whereas I, A. B., of —, in the county of —, and State of —, have invented certain new and useful improvements in —, for which I am about to make application for letters patent of the United States; and whereas, J. D., of —, aforesaid, has agreed to purchase from me all the right, title, and interest, which I have, or may have, in and to the said invention, in consequence of the grant of letters patent therefor, and has paid to me, the said A. B., the sum of —, the receipt of which is hereby acknowledged: Now this indenture witnesseth, that for and in consideration of the said sum to me paid, I have assigned and transferred, and do hereby assign and transfer to the said J. D., the full and exclusive right to all the improvements made by me, as fully set forth and described in the specification which I have prepared and executed preparatory to the obtaining of letters patent therefor. And I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said J. D., as the assignee of my whole right and title thereto, for the sole use and behoof of the said J. D., and his legal representatives.

In testimony whereof, &c.

A. B. [L. s.]

Witness: C. — D. —, E. — F. —.

FEES PAYABLE AT THE PATENT OFFICE.

All fees must be paid in advance—the amount fixed by law; except in the case of drawings, the expense of which will be communicated on application for the same.

Patent fee for a citizen of the U. S., or for a foreigner who has resided here one year, and made oath of his intention of becoming a citizen	30 00
For a subject of Great Britain	500 00
All other foreigners	300 00
For entering a caveat	20 00
For entering an application for the decision of arbitrators, after notice from Commissioner that the invention is not new, or that it interferes with a pending application	25 00
For extending a patent beyond the fourteen years	40 00
For adding the specification of subsequent improvement	15 00
In case of reissues, for every additional patent	30 00
For surrender of an old patent to be reissued, to correct a mistake of the patentee	15 00
On application for a design	15 00
For a disclaimer	10 00
For copies of patents, or any other paper on file, for each 100 words	10

It is recommended to make a deposit with the Assistant Treasurer, and other officers authorized to receive public moneys, of the fee for a patent or other application, and to remit the certificate. Where this cannot be done without much inconvenience, gold may be remitted by mail, at the risk of the applicant.

EXPLANATION OF THE SIGNS USED IN THIS WORK.

- = *Equal to*, as 12 inches = 1 foot, or $6 \times 6 = 4 \times 9 = 36$.
- + *Plus*, or *more*, signifies addition; thus, $4 + 2$ denotes that 2 is to be added to 4.
- *Minus*, or *less*, denotes subtraction; thus, $8 - 2 = 6$.
- \times *Multiplied by*, or *into*, signifies multiplication; as $7 \times 9 = 63$.
- \div *Divided by*, signifies division, as $117 \div 9 = 13$.
- : :: signifies *Proportion*; thus $4 : 6 :: 8 : 12$; and is read, as 4 is to 6 so is 8 to 12.
- $\sqrt{}$ indicates the *square root*; as $\sqrt{25} = 5$, because $5 \times 5 = 25$.

DECIMALS.

A *Decimal Fraction* is a fraction whose denominator is 10, or 100, or 1000, &c. The denominator of a decimal is never written; the numerator is written with a point (.) prefixed to it, and the denominator is understood to be a unit, with as many ciphers annexed as the numerator has places of figures. Thus,

$$.5 \text{ is } \frac{5}{10}, .25 \text{ is } \frac{25}{100}, .825 \text{ is } \frac{825}{1000}.$$

Independent of the point (.) which distinguishes between integers and decimals, the fundamental rules of Addition, Subtraction, Multiplication and Division are the same as in simple arithmetic. Ciphers placed on the right of Decimals do not change their values; but placed on their left decrease their value tenfold; thus,

$$.1 \text{ is } \frac{1}{10}, .01 \text{ is } \frac{1}{100}, .001 \text{ is } \frac{1}{1000}.$$

In *Adding* and *Subtracting* Decimals keep the points under each other.

In *Dividing* Decimals, point off in the *quotient* as many places for decimals as the decimal places in the *dividend* exceed those in the *divisor*; thus,

$$20.5) 20.500 (1.00$$

If there be not figures enough in the *quotient* to point off, prefix ciphers.

In *Multiplying* Decimals point off as many figures in the *product*, from the *right* hand, accounted as decimals, as there are decimals in the *multiplier* and *multiplicand* taken together; thus,

$$15.32 \times 2.4 = 36.768.$$

Reduce Decimals by multiplying them by the next lower denomination. [See Table of Decimals equivalent to the Fractional parts of a Gallon, Pound, Foot, and Inch.]

EPITOME OF MENSURATION.

BOARD and PLANK are usually measured by the *square* or *superficial* foot of 144 inches. **TON TIMBER** is measured by the *cubic* foot of 1728 inches.

40 cubic feet of *round*, or 50 feet of *hewn* timber, equal 1 load, or ton.

To find the number of square (or superficial) feet multiply the *length* in *inches* by the *breadth* in *inches*, and divide by 144. *But when all the dimensions are in feet, multiply the length in feet by the breadth in feet,—omitting the divisor.*

Example 1.—How many square feet are there in the *left hand* figure (suppose it a *Table, Slab of Marble, Brick Wall, Board, Plank, &c.*) its length being 6 feet, and its breadth 6 feet? *Answer*, $6 \times 6 = 36$ square feet.

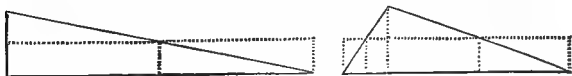


Example 2.—How many square feet are there in the *right hand* figure (sup-

posing it a *Board, Table, &c.*, its length being 4 feet and 5 inches, and its breadth (taken on the dotted line) 2 feet 3 inches.—[When either of the dimensions are in feet and inches, both may be reduced to inches.]

$$\begin{aligned} 4 \text{ feet } 5 \text{ inches} &= 53 \text{ inches} \times 27 \div 144 = 9.9 \text{ square feet.} \\ 2 \text{ feet } 3 \text{ inches} &= 27 \text{ inches.} \end{aligned}$$

TRIANGLE.—If the figure be a *triangle*, of whatever form, multiply the *perpendicular*, (the highest part,) by *one half* of the *base*, (the length.)



Example.—The extreme length (or base) of the left hand figure under this rule is 14 feet 7 inches; the breadth (or perpendicular) is 4 feet 2 inches. What is its area?

$$\begin{aligned} 14 \text{ feet } 7 \text{ inches} &= 175 \text{ inches} \div 2 = 87.5 \times 50 \div 144 = 30.3 \text{ square feet.} \\ 4 \text{ feet } 2 \text{ inches} &= 50 \text{ inches.} \end{aligned}$$

LAND MEASURE.—How many square feet of *land* are there in a lot, which is laid out in a *right angled triangle* (represented by the left hand figure) the *base* measuring 49 feet, and the *perpendicular* 30 feet.

$$49 \times 30 = 1470 \text{ feet} \div 2 = 735 \text{ square feet.}$$

BOARD MEASURE.—BOARDS are measured by the *square* (or *superficial*) feet,—thus, *Multiply the length of the board in feet by the width in inches and divide the product by 12.*

Example 1.—How many square feet are there in a *Board*, or *Plank*, 18 feet long by 10 inches wide?

$$18 \text{ feet} \times 10 \text{ inches} = 180 \div 12 = 15 \text{ square feet.}$$

RULE—When the *Board*, or *Plank*, tapers gradually add the width of the two ends together, and one half their sum multiplied by the length, will give the number of square feet.

Example 2.—How many square feet are there in a *Board* 18 feet long, 13 inches wide at one end and 17 inches at the other?—(Average breadth 15 inches.)

$$18 \text{ feet} \times 15 \text{ inches} = 270 \div 12 = 22\frac{1}{2} \text{ square feet.}$$

TIMBER and PLANK.—In measuring *timber* or *plank* which runs tapering, both in width and thickness, the *common rule* is, to add together the area of the two ends, and one half of the sum multiplied by the length and divided by 144, will give the solid contents. This rule is not exact, but it is sufficient where absolute accuracy is not required.

Example 1.—Required the solidity of a *tapering square stick of timber*, the largest end being 14 inches square, the lesser end 10 inches, and the length 40 feet. Answer,—Contents by the *common rule*, 41.11 cubic feet.

$$\begin{aligned} 14 \times 14 &= 196 + 100 \div 2 \times 40 \div 144 = 41.11 \text{ cubic feet.} \\ 10 \times 10 &= 100. \end{aligned}$$

Another method to find the Solidity of a Frustum.

RULE.—The squares of the diameters of the two ends of the frustum of a *Cone* added to the product of the two diameters, and that sum by its height and by .2618, the product is the number of cubic inches, which divided by 231 gives the number of gallons

Example.—Required the solid content, and gallons in a *Coffee-pot, Pail, &c.* whose height is 18 inches, diameter at the top 6 inches, and diameter at the bottom 9 inches.

$$\begin{aligned} 6 \times 9 &= 54 \\ 6^2 + 9^2 &= 117 \end{aligned} \quad \begin{aligned} &= 171 \times 18 = 3078 \times .2618 = 805.82 \text{ inches.} \end{aligned}$$

$$805.82 \div 231 = 3.488 \text{ Gallons (or } 3\frac{3}{8} \text{ gallons).}$$

[See Table of Decimals equivalent to fractional parts of a Gallon].

ROUND TIMBER.—For round Timber add together the girth of the two ends and divide the sum by 2, for the mean girth; then square (*) $\frac{1}{4}$ of this quotient, and multiply the product by the length, which gives the contents.

* [The square of any number is that number multiplied by itself. Thus: $2 \times 2 = 4$, = the square of 2; $4 \times 4 = 16$ the square of 4, &c.]

Example.—The mean girth of a tree being 5 feet 8 inches, and its length 48 feet, required its cubical contents.

5 ft. 8 inches = 68 inches $\div 4 = 17 \times 17 \times 216 \div 1728 (*) = 36.125$ cubic feet
18 feet = 216 inches.

* [If the measurements are reduced to inches, divide by 1728; but if one of the measures is in feet, multiply the inches by feet, and divide the product by 144.]

The above rule gives the customary, but the true content is found by squaring one fifth of the girth, and multiplying by twice the length.

Example.—The same as above, girth 5 feet 8 inches, length 18 feet.

Girth = $68 \div 5 = 13.6 \times 13.6 \times 36 \div 144 = 46.24$ cubic feet.
 $18 \times 2 = 36$ = twice the length.

CIRCLES. To find the area of a Circle multiply the square of the Diameter by the Decimal .7854, and the Product will be the area.

Example. Required the area of a Circle whose diameter is 6 inches?

$6 \times 6 = 36 \times .7854 = 28.274$ Square Inches.

[Also, see table of "Areas of Circles."]

To find the circumference of a Circle from the diameter, multiply the diameter by 3.1416 the product is the circumference; and multiply the circumference by .31831, and the product is the diameter.

In the formation of a Hoop or Ring of Wrought Iron, the following is the rule to determine the length of the Iron in an unbent state:— If it is the interior diameter of the hoop that is given, add the thickness of the iron; but if the exterior diameter, subtract from the given diameter the thickness of the iron, multiply the sum or remainder, by 3.1416, and the product is the length of the iron, in equal terms of unity.

Supposing the interior diameter of a hoop to be 32 inches, and the thickness of the iron $1\frac{1}{2}$, what must be the proper length of the iron, independent of any allowance for shutting?

$32 + 1.25 = 33.25 \times 3.1416 = 104.458$ inches.

Again, let it be required to form a hoop of iron 7-8 inch in thickness, and $46\frac{1}{2}$ inches outside diameter.

$16.5 - .875 = 15.625$, or 1 foot 3 5-8 inches,
independent of any allowance for shutting.

CYLINDERS.— To find the solidity of a cylinder, (a round stick of timber of uniform diameter, or a grindstone, &c.) multiply the area of the base, (as in the above example,) by the length, and the product will give the solid contents.

Example. Required the Solid Content of an Iron Roller, 2 feet 6 inches in diameter, and 12 feet in length?

2 ft. 6 in. = 30 in. $\times 30 \times .7854 \times 12 \div 144 = 58.905$ Cubic Feet.



WATER TANKS, CISTERNS, and OIL CANS, &c.— To find the capacity of any Cylindrical Vessel, find its interior cubic content in inches, by the foregoing rules, then, if its capacity be required in gallons divide by 231, (the number of cubic inches in a U. S. gallon.)

Example. — Required the number of gallons in a Can, whose diameter is 30 inches, and depth 50 inches?

$30 \times 30 \times .7854 \times 50 \div 231 = 153$ gallons.

Or, if the interior diameter of the Can is $2\frac{1}{2}$ feet, and its depth $2\frac{1}{2}$ feet, then
 $2.25 \times 2.25 \times 2.5 \times 5.868 = 74\frac{1}{4}$ gallons.

Or, if the diameter of a Tank is 62 inches, and its depth 100 inches, then
 $62 \times 62 \times 100 \times .0034 = 1306.96$ gallons.

Or, if the capacity of any vessel is required, from the size of a Gill to a Water Tank, &c., see the Table "Area of Circles".

CUBIC, OR SOLID MEASURE. To find the Cubical Content in a *Stick of Timber, Block of Stone, Box, Bin, &c.* If all the Dimensions are in Feet, multiply the Length by the Breadth, and this product by the Depth to obtain the number of Cubic Feet.

If the Length is in Feet and the width and depth in Inches, multiply the length by the width and this Product by the depth in inches,—then divide the last Product by 144 for the Cubic Feet. If all the Dimensions are in Feet and Inches reduce the whole to Inches, then multiply the Length, Breadth and Depth together, and divide the Product by 1728 to obtain the Cubic Feet.

Required the number of cubic feet in a *box, stone, &c.*, $4\frac{1}{2}$ feet long, $2\frac{1}{2}$ feet wide and 2 feet deep ?

$$4.5 \times 2.5 \times 2 = 22\frac{1}{2} \text{ cubic feet.}$$

To find the capacity of a *bin, cistern, tanner's vat, &c.*, find its (interior) cubic contents in *inches* by the preceding rules, then if the capacity be required in *gallons*, divide the whole number of inches by 231; — if in bushels, by 2150.42, — or, if in heaped bushels, by 2747.70.

Or, if the interior of a *coal bin* be 4 feet in length, 41 inches in breadth, and 32 inches in depth; then,

$4 \times 41 \times 32 \times .00694 = 36\frac{1}{2}$ cubic feet, = 2000 lbs., or 1 ton of Beaver Meadow or Lehigh Coal.

1 Cubic Foot of Peach Mountain Coal, broken and screened for Stoves, weighs 54 pounds, and requires 37 cubic feet of space to stow one ton of 2000 pounds.

Coal is bought at wholesale at the rate of 2240 pounds to the ton, and sold at retail at the rate of 2000 pounds to the ton, *screened*.

Or, if the interior of a *crib* be $6\frac{1}{2}$ feet in length, $3\frac{3}{4}$ feet in breadth, and $3\frac{1}{2}$ feet in depth; then,

$$6.5 \times 3.75 \times 3.25 \times .80356 = 63.6522 \text{ (or } 63\frac{1}{2} \text{ bushels and } \frac{1}{2} \text{ peck.)}$$

The Solid Contents of all bodies, which are of uniform bigness throughout, whatever may be the form of the ends is found by multiplying the area of one end into its height or length.

144 inches equal (=) 1 square foot, (or, *area*.)

1728 inches equal (=) 1 cubic foot, (or, *solid contents*.)

MEASURES OF CAPACITY AND WEIGHT.

MEASURES OF WEIGHT. — *Avoirdupois* : — 16 drams equal 1 ounce; 16 ounces 1 pound; 112 pounds one hundred weight; 20 hundred weight 1 ton. — *Troy* : — 4 grains equal 1 carat; 24 grains 1 pennyweight; 20 pennyweights 1 ounce; 12 ounces 1 pound. — *Apothecaries* : — 20 grains equal 1 scruple (♄); 3 scruples 1 dram (℥); 5 drams 1 ounce (℥); 12 oz. 1 (lb) lb.

MEASURES OF SURFACE, OR SQUARE MEASURE. — 144 square inches = 1 square foot; 9 square feet = 1 square yard; $30\frac{1}{2}$ square yards = 1 square rod, or pole; 40 square rods = 1 square rood; 4 square roods = 1 square acre. (or 43,560 feet;) 640 square acres = 1 square mile.

MEASURES OF CAPACITY (DRY). — 2150.42 cubic inches = 1 United States (or Winchester) bushel; the dimensions of which are $18\frac{1}{2}$ inches diameter inside, $19\frac{1}{2}$ inches outside, and 8 inches deep; 2747.70 cubic inches = 1 heaped bushel, the cone of which must not be less than 6 inches high. 2211.84 cubic inches = 1 New York statute bushel; 1 Imperial (British) bushel = 2218.192 cubic inches, and contains 80 lbs. of distilled water; the same in Ohio, 1 quarter of wheat = 8 bushels English, $8\frac{1}{2}$ U. States.

MEASURES OF LENGTH:— $16\frac{1}{2}$ feet equal 1 rod or pole; 40 rods, 1 furlong; 8 furlongs, (or 5280 feet,) 1 mile; 60 geo. miles = 1 degree. — **ROPES AND CABLES:**—6 feet are equal to 1 fathom; 120 fathoms, to 1 cable's length.

FRENCH MEASURES OF FREQUENT REFERENCE, COMPARED WITH U. S. MEASURES—Toise, 76·755 inches; League, 2280 toises (common) 2000 (post); Fathom, 5 feet; Metre, 3·28 feet; Decimetre (1-10th metre), 3·94 inches; Velt, 2 gallons; Hectolitre, 26·42 do.; Decalitre, 2·64 do.; Litre, 2·11 pints; Kilo-litre, 35·32 feet; Hectolitre, 2·84 bushels; Decalitre, 9·08 quarts; Millier, 2·205 pounds; Quintal, 220·54 do.; Kilogramme, 2·21 do.; 100 pounds 107·93 do.; 100 feet, 106·60 feet; Ton (of wine) 240 gallons.

STANDARD WEIGHT OF GRAIN AND OTHER ARTICLES.

Legal Weight of a Bushel of various Articles in Massachusetts.—Salt, 70 lbs.; Wheat, 60; Corn, or Rye, 56; Oats, 32; Barley, or Buckwheat, 48; Corn, or Rye Meal, 50; a Ton, 2000 lbs.; cwt., 100 lbs. *In Indiana.*—Wheat, 60 lbs.; Shelled Corn, 56; Corn on the Cob, 68; Buckwheat, 50; Beans, 60; Potatoes, 60; Clover Seed, 60; Hemp Seed, 44; Blue Grass Seed, 14; Castor Beans, 46; Dried Peaches, 33; Dried Apples, 25; Onions, 48; Salt, 50; Mineral Coal, 70; Timothy Seed, 45; Rye, 56; Oats, 32; Flax Seed, 56; Barley, 42; Corn Meal, 50; a Ton of Hay, 2000 lbs.

One Bushel of Bituminous Coal in the Western States = 2688 cubic inches = 76 pounds. Stone Coal, in Illinois, 80 lbs. to one bushel.

MEASURES OF CAPACITY (LIQUIDS.)—231 cubic inches equal 1 United States standard gallon; 282 cubic inches = 1 ale gallon; 277·274 cubic inches = 1 Imperial (British) gallon, for dry, beer and wine; $31\frac{1}{2}$ U. S. gallons = 1 barrel; 42 galls. = 1 tierce; 63 galls. = 1 hogshead; 84 galls. = 1 puncheon; 126 galls. = 1 pipe; 252 = 1 tun.

Gallons. The U. S. standard gallon contains 8·3389 avoirdupois pounds, or 58372·1754 troy grains of distilled water, at 39·83° Fahrenheit, the barometer at 30 inches; 1 gallon of ale weighs 10·5 lbs.; 1 Imperial (British) gallon weighs 10 lbs.; 1 gallon of Sperm Oil weighs $7\frac{1}{2}$ lbs.; 1 do. of Linseed $7\frac{1}{2}$ lbs.; 1 do. of Olive $7\frac{1}{2}$ lbs.; 1 do. of Whale 7 lbs. 11 ozs.; 1 do. of Proof Spirits 7 lbs. 15 ozs.; 1 do. Spirits of Turpentine 7 lbs. 5 ozs.

MEASURES OF SOLIDITY, OR CUBIC MEASURE.—1728 inches = 1 cubic foot; 27 cubic feet = 1 cubic yard; 40 cubic feet of round timber = 1 ton; 50 cubic feet of hewn timber = 1 ton; 16 cubic feet of wood = 1 foot of wood; 8 feet of wood (or 128 cubic feet,) = 1 cord; 1 chaldron of Newcastle coal = 5936 lbs.; 1 perch of stone = 24·75 cubic feet.

NUMBER OF CUBIC FEET IN A TON (2240 lbs.) OF VARIOUS BODIES:—Marble, 15·07; Granite, 16; Common Stone, 14·22; Paving Stone, 14·83; Sand, 23·5; Tallow, 38; English Oak, 37; American Oak, 41; Ash, 47; Elm, 64·5; Beech, 50·5; Teak, 49; Spanish Mahogany, 45; Honduras Do. 55; Maple, and Riga Fir, 47·8; Larch, 65·8; Pitch Pine, 53·6; Oil, 39; Proof Spirits, 38·6; Distilled Water, 35·6; Sea Water, 34·7; Grindstones, 17; Brick 17.

WEIGHT OF VARIOUS SUBSTANCES:—*lbs. Avoirdupois.*—1 cubic foot of bricks weighs 124 pounds; 1 do. of clay, 130; 1 do. of sand, or loose earth, 95; 1 do. of common soil, 124; 1 do. of cork, 15; 1 do. of clay and stones, 160; 1 do. of Marble, 171; 1 do. of Granite, 165; 1 do. of Cast Iron, 450·55; 1 do. of Wrought Iron, 486·65; 1 do. of Steel, 489·8; 1 do. Copper, 555; 1 do. Lead, 708·75; 1 do. Brass, 534·75; 1 do. Tin, 436; 1 do. White Pine, 29·56; 1 do. Pitch Pine, 41·8; 1 do. Red Pine, 41·5; 1 do. Elm, 34·9; 1 do. English Oak, 60·4; do. do. 58·6; 1 do. Canadian, 54·8; 1 do. New England Fir, 34·9; 1 do. Sea Water, 64·3; 1 do. Fresh, 62·5; 1 do. Air, ·07529; 1 do. Steam, ·03689.

Weight of a Cubic Inch in Pounds.—Of Lead ·410 lb.; Sheet Copper ·323; Sheet Brass ·304; Sheet Iron ·279; Cast Iron ·263; Cast Tin ·264; Cast Zinc ·245; Platinum, rolled, ·797; do. wire, ·762; do. hammered, ·735; do. purified, ·705; do. crude, grains, ·566; Gold, hammered, ·701; do. pure cast, ·698; do. 20 carats fine, ·567; Silver, hammered, ·382; do. pure, ·378; Cast Steel, ·287; do. common soft, ·294; do. hard and tempered, ·282; Iron, bar, ·251; do. cast, ·261; do. hammered, ·251

MULTIPLIERS FOR FACILITATING CALCULATIONS,

The product multiplied by the Decimals in the Table, is an approximation to the Capacity in Gallons, Weight in Pounds, Bushels, Square Feet, Cubic Feet, Miles, and Yards.

Lineal feet multiplied by	.00019	equal miles.
" yards "	.000568	" "
Square inches "	.007	" square feet.
" yards "	.0002067	" acres.
Circular inches "	.00546	" square feet.
Cylindrical inches "	.0004546	" cubic feet.
" feet "	.02909	" cubic yards.
Cubic inches "	.00058	" cubic feet.
" feet "	.03704	" cubic yards.
Cubic feet "	7.477	" United States gallons.
" inches "	0.433	" " "
Cylindrical feet "	5.868	" " "
" inches "	.0034	" " "
Cubic feet "	6.232	" Imperial gallons.
" inches "	.003607	" " "
Cylindrical feet "	4.895	" " "
" inches "	.002832	" " "
Cubic feet "	.80356	" United States bushels.
" inches "	.0465	" " "
" " "	.779	" Imperial "
Cylindrical feet "	.6312	" United States bushels.
" " "	.61183	" Imperial "
Cubic inches "	.263	" lbs. av. of cast iron.
" " "	.281	" " wrought "
" " "	.283	" " steel.
" " "	.3225	" " copper.
" " "	.3037	" " brass.
" " "	.26	" " zinc.
" " "	.4103	" " lead.
" " "	.2636	" " tin.
" " "	.4908	" " mercury.
" " "	.0356	" " ice.
" " "	.036	" " fresh water.
" " "	.037	" " salt water.
" " "	.033	" " oil.
Cylindrical inches "	.2065	" " cast iron.
" " "	.2168	" " wrought iron.
" " "	.2223	" " steel.
" " "	.2533	" " copper.
" " "	.2395	" " brass.
" " "	.2042	" " zinc.
" " "	.3223	" " lead.
" " "	.207	" " tin.
" " "	.3854	" " mercury.
" " "	.253	" " fresh water.
" " "	.029	" " salt water.
" " "	.026	" " oil.
Avoirdupois lbs. "	.009	" cwts.
" " "	.00045	" tons.

Example 1.—Required the number of Gallons contained in a Ship's Water Tank, whose interior diameter is $4\frac{1}{2}$ feet, and depth 18 feet.

$$4.5 \times 4.5 \times 18 \times 5.868 = 2141.4 \text{ Gallons.}$$

Example 2.—Required the weight of a Cast Iron Cylinder whose diameter is 5 inches, and length 6 feet.

$$5 \times 5 \times 72 \times .2065 = 371.7 \text{ Pounds.}$$

Example 3.—Required the number of bushels in a bin, whose interior length is 10 feet, breadth 6 feet, and depth 4 feet.

$$10 \times 6 \times 4 \times .80356 = 192.8 \text{ Bushels.}$$

READY RECKONERS.

PRACTICAL TABLES.

WASTE IN MATCHING WESTERN BOARDS.

The following Table shows the per centage of waste in Matching, or Tongue and Grooving, Western Stock Boards,—not measuring the tongue:—

16 inches wide, 3 per cent.	8 inches wide, 6 and 4-10 per cent.
14½ “ “ 3 and 5-10 per cent.	7 “ “ 7 “ 2-10 “ “
13½ “ “ 3 “ 7-10 “ “	6 “ “ 8 “ 3-10 “ “
12 “ “ 4 “ “ “	5 “ “ 10 “ “ “
11 “ “ 4 and 8-10 “ “	4 “ “ 12 and 5-10 “ “
10 “ “ 5 “ 1-10 “ “	3 “ “ 16 “ 6-10 “ “
9 “ “ 5 “ 6-10 “ “	

It is very seldom that boards are stocked less than 10 inches, unless made from what is termed siding.

In splitting or sawing up Stock Boards for narrow sheathing, 2 or 3 per cent. more should be added to cover all waste.

TABLE OF SUPERFICIAL, OR, FLAT MEASURE,

By which the Content in SUPERFICIAL FEET, of Boards, Plank, Paving, &c., of any LENGTH and BREADTH can be obtained, by multiplying the decimal expressed in the table by the length of the board, &c.

Breadth in inches	Area of a lineal foot.	Breadth in inches	Area of a lineal foot.	Breadth in inches	Area of a lineal foot.	Breadth in inches	Area of a lineal foot.
¼	.0208	3¼	.2708	6¼	.5208	9¼	.7708
½	.0417	3½	.2916	6½	.5416	9½	.7917
¾	.0625	3¾	.3125	6¾	.5625	9¾	.8125
1	.0834	4	.3334	7	.5833	10	.8334
1¼	.1042	4¼	.3542	7¼	.6042	10¼	.8542
1½	.125	4½	.375	7½	.625	10½	.875
1¾	.1459	4¾	.3958	7¾	.6458	10¾	.8959
2	.1667	5	.4167	8	.6667	11	.9167
2¼	.1875	5¼	.4375	8¼	.6875	11¼	.9375
2½	.2084	5½	.4583	8½	.7084	11½	.9583
2¾	.2292	5¾	.4792	8¾	.7292	11¾	.9792
3	.25	6	.5	9	.75	12	1.0000

Example 1. Required the number of square feet in a strip of board 10 feet long by 2 inches wide?

Opposite 2 is .1667 which multiplied by (×) 10 equals (=) 1 foot 8 inches.

Example 2. Required the number of square feet in a board or plank, 41 feet long by 2¼ inches wide? Opposite ¼ is .0625, to which add 2 to the left of the decimal for feet (when the width of the board exceeds 11½ inches, add 1 to the left of the decimal for each foot); then 2.0625 × 41 feet = 84 feet 7 inches.

.1667 ...*Multiplicand*
10 ...*Multipplier.*
1.6670 ...*Product.*

2.0625
41
20625
82500
84.5625. *Ans. 85 feet.*

NOTE.—The last two figures of the Decimals, (when the length of the article consists of but a few feet) may be dropped, and those remaining multiplied.

Example 3. The pavement of a side-walk is 40 feet long by 6 feet $6\frac{1}{2}$ inches wide; required the number of square feet. Opposite $6\frac{1}{2}$ is .5416, to which add 6 for feet: then, $6.5416 \times 40 = 261$ feet 8 inches.

$$\begin{array}{r} 6.5416 \\ 40 \\ \hline 261.6640 \end{array} \quad \text{Ans. 262 feet.}$$

Example 4. A room measures 16 feet by 15 feet $3\frac{1}{2}$ inches, how many square feet of flooring does it contain. Opposite $3\frac{1}{2}$ is .2916, to which add 15 for feet; then, $15.2916 \times 16 = 244$ feet 8 inches.

$$\begin{array}{r} 15.2916 \\ 16 \\ \hline 917.496 \\ 152916 \\ \hline 244.6656 \end{array} \quad \text{Ans. 245 feet.}$$

If yards are required divide the *Product* by 9.

Example 5. Required the number of square feet in a board 14 feet long 15 inches wide at one end and 9 at the other? (add together the width of the two ends and divide by 2 = 12 inches, mean width.) Opposite 12 is $1 \times 14 = 14$ feet.

$$\begin{array}{r} 1 \\ 14 \\ \hline 14 \end{array} \quad \text{Ans. 14 feet.}$$

It is customary, in measuring boards, &c., to count as nothing all fractions under 6 inches, and to count as one foot 6 inches and all fractions over.

ROUND AND EQUAL-SIDED TIMBER MEASURE.

Table for ascertaining the number of Cubical Feet, or Solid Contents, in a Stick of Round or Equal-sided Timber, Tree, &c.

$\frac{1}{4}$ Girt in Inches.	Area in Feet.	$\frac{1}{4}$ Girt in Inches.	Area in Feet.	$\frac{1}{4}$ Girt in Inches.	Area in Feet.	$\frac{1}{4}$ Girt in Inches.	Area in Feet.	$\frac{1}{4}$ Girt in Inches.	Area in Feet.
6	.25	10 $\frac{1}{4}$	.803	15 $\frac{1}{4}$	1.668	20 $\frac{1}{4}$	2.898	25	4.34
6 $\frac{1}{2}$	.272	11	.84	15 $\frac{1}{2}$	1.722	20 $\frac{1}{2}$	2.917	25 $\frac{1}{2}$	4.428
6 $\frac{3}{4}$	.294	11 $\frac{1}{4}$	.878	16	1.777	20 $\frac{3}{4}$	2.99	25 $\frac{3}{4}$	4.516
6 $\frac{3}{4}$	.317	11 $\frac{1}{2}$	.918	16 $\frac{1}{4}$	1.833	21	3.062	25 $\frac{3}{4}$	4.605
7	.34	11 $\frac{3}{4}$	.959	16 $\frac{1}{2}$	1.89	21 $\frac{1}{4}$	3.136	26	4.694
7 $\frac{1}{4}$	.364	12	1.	16 $\frac{3}{4}$	1.948	21 $\frac{1}{2}$	3.209	26 $\frac{1}{4}$	4.785
7 $\frac{1}{2}$	.39	12 $\frac{1}{4}$	1.042	17	2.006	21 $\frac{3}{4}$	3.285	26 $\frac{1}{2}$	4.876
7 $\frac{3}{4}$	.417	12 $\frac{1}{2}$	1.085	17 $\frac{1}{4}$	2.066	22	3.362	26 $\frac{3}{4}$	4.969
8	.444	12 $\frac{3}{4}$	1.129	17 $\frac{1}{2}$	2.126	22 $\frac{1}{4}$	3.438	27	5.062
8 $\frac{1}{4}$	.472	13	1.174	17 $\frac{3}{4}$	2.187	22 $\frac{1}{2}$	3.516	27 $\frac{1}{4}$	5.158
8 $\frac{1}{2}$	.501	13 $\frac{1}{4}$	1.219	18	2.25	22 $\frac{3}{4}$	3.598	27 $\frac{1}{2}$	5.252
8 $\frac{3}{4}$	.531	13 $\frac{1}{2}$	1.265	18 $\frac{1}{4}$	2.313	23	3.673	27 $\frac{3}{4}$	5.348
9	.562	13 $\frac{3}{4}$	1.313	18 $\frac{1}{2}$	2.376	23 $\frac{1}{4}$	3.754	28	5.444
9 $\frac{1}{4}$	.594	14	1.361	18 $\frac{3}{4}$	2.442	23 $\frac{1}{2}$	3.835	28 $\frac{1}{4}$	5.542
9 $\frac{1}{2}$	.626	14 $\frac{1}{4}$	1.41	19	2.506	23 $\frac{3}{4}$	3.917	28 $\frac{1}{2}$	5.64
9 $\frac{3}{4}$	.659	14 $\frac{1}{2}$	1.46	19 $\frac{1}{4}$	2.574	24	4.	28 $\frac{3}{4}$	5.74
10	.694	14 $\frac{3}{4}$	1.511	19 $\frac{1}{2}$	2.64	24 $\frac{1}{4}$	4.084	29	5.84
10 $\frac{1}{4}$	.73	15	1.562	19 $\frac{3}{4}$	2.709	24 $\frac{1}{2}$	4.168	29 $\frac{1}{4}$	5.941
10 $\frac{1}{2}$	.766	15 $\frac{1}{4}$	1.615	20	2.777	24 $\frac{3}{4}$	4.254	29 $\frac{1}{2}$	6.044

RULE. Multiply the area in Feet, corresponding to the $\frac{1}{4}$ th Girt, by the length of the stick of Timber, and the *product* is the solidity in feet and decimal parts of a foot.

Example 1. A stick of Timber is 18 feet long and 56 inches girt, how many cubic feet does it contain? Opposite 14 is 1.361 which $\times 18 = 24$ feet 6 inches.

$$\begin{array}{r} 1.361 \\ 18 \\ \hline 10888 \\ 1361 \\ \hline 24.498 \end{array} \quad \text{Ans. 24}\frac{1}{2} \text{ feet.}$$

RULE. — If a tree, or timber, is *tapering*, girt it about one-third of the way from the *butt* to the top; — or add together the area at the two ends, and divide the sum by 2, to obtain the mean girth; or take the girth of the tree at equal distances from each other, add all the girths together, and divide the sum by this number, for the mean girth.

It is usual to allow, on account of the bark, in oak 1-10th or 1-12th part of the circumference, beech, ash, &c., should be less.

TABLE, SHOWING THE SOLID CONTENTS IN TIMBER, BOXES, PACKAGES, &c.

RULE TO FIND SOLID (OR CUBIC) FEET.—If all the dimensions are in *Feet* multiply the *length* by the *width* and this *product* by the *depth*.—If all the Dimensions are in *feet and inches*, reduce the whole to inches, and multiply the *length, breadth* and *depth* together, and divide the product by 1728, to obtain cubic feet.

The *Width* and *Thickness* of the *Timber* or *Package* is given in the *top lines* of the Tables. The column on the left contains, first, the length in *feet*, and below the length in *inches*. If the length of the Timber or Package is in Feet and Inches, add the Feet and Inches together.

If a Timber or Package be of larger Thickness or Breadth than is contained in the Tables, add two numbers together, or double a number.

If the Length of the Timber is not contained in the Table, take twice some length, or add two lengths together. Suppose a Timber is 5 by 6 inches, and 22 feet long, take twice 11, and you have 4 feet 8 inches.

L'ng ft. in	5 Inches Thick by												6 Inches Thick by											
	6 B	7 B	8 B	9 B	10 B	11 B	12 B	6 B	7 B	8 B	9 B	10 B	11 B	12 B	6 B	7 B	8 B	9 B	10 B	11 B	12 B	6 B	7 B	8 B
1	0 3	0 3	0 3	0 4	0 4	0 5	0 5	0 3	0 4	0 4	0 5	0 5	0 6	0 6	0 3	0 4	0 4	0 5	0 5	0 6	0 6	0 3	0 4	0 4
2	0 5	0 6	0 7	0 8	0 8	0 9	0 10	0 6	0 7	0 8	0 9	0 10	0 11	1 0	0 6	0 7	0 8	0 9	0 10	0 11	1 0	0 6	0 7	0 8
3	0 8	0 9	0 10	0 11	1 1	1 2	1 3	0 9	0 11	1 0	1 2	1 3	1 4	1 5	0 9	0 11	1 0	1 2	1 3	1 4	1 5	1 0	1 1	1 2
4	0 10	1 0	1 1	1 3	1 5	1 6	1 8	1 0	1 2	1 4	1 6	1 8	1 10	2 0	1 0	1 2	1 4	1 6	1 8	1 10	2 0	1 0	1 2	1 4
5	1 1	1 3	1 5	1 7	1 9	1 11	2 1	1 3	1 6	1 8	1 11	2 1	2 4	2 6	1 3	1 6	1 8	1 11	2 1	2 4	2 6	1 3	1 6	1 8
6	1 3	1 6	1 8	1 11	2 1	2 4	2 6	1 6	1 9	2 0	2 3	2 6	2 9	3 0	1 6	1 9	2 0	2 3	2 6	2 9	3 0	1 6	1 9	2 0
7	1 6	1 8	1 11	2 2	2 5	2 8	2 11	1 9	2 1	2 4	2 8	2 11	3 1	3 3	1 9	2 1	2 4	2 8	2 11	3 1	3 3	1 9	2 1	2 4
8	1 8	1 11	2 3	2 6	2 9	3 1	3 4	2 0	2 4	2 8	3 0	3 4	3 8	4 0	2 0	2 4	2 8	3 0	3 4	3 8	4 0	2 0	2 4	2 8
9	1 11	2 2	2 6	2 10	3 2	3 5	3 9	2 3	2 8	3 0	3 5	3 9	4 4	4 6	2 3	2 8	3 0	3 5	3 9	4 4	4 6	2 3	2 8	3 0
10	2 1	2 5	2 9	3 2	3 6	3 10	4 2	2 6	2 11	3 4	3 9	4 2	4 7	5 0	2 6	2 11	3 4	3 9	4 2	4 7	5 0	2 6	2 11	3 4
11	2 4	2 8	3 1	3 5	3 10	4 2	4 7	2 9	3 3	3 8	4 2	4 7	5 1	5 6	2 9	3 3	3 8	4 2	4 7	5 1	5 6	2 9	3 3	3 8
12	2 6	2 11	3 4	3 9	4 2	4 7	5 0	3 0	3 6	4 0	4 6	5 0	5 6	6 0	3 0	3 6	4 0	4 6	5 0	5 6	6 0	3 0	3 6	4 0
13	2 9	3 2	3 7	4 1	4 6	5 0	5 5	3 3	3 10	4 4	4 11	5 5	6 0	6 6	3 3	3 10	4 4	4 11	5 5	6 0	6 6	3 3	3 10	4 4
14	2 11	3 5	3 11	4 5	4 10	5 4	5 10	3 6	4 1	4 8	5 3	5 10	6 5	7 0	3 6	4 1	4 8	5 3	5 10	6 5	7 0	3 6	4 1	4 8
15	3 2	3 8	4 2	4 8	5 3	5 9	6 3	3 9	4 5	5 0	5 8	6 3	6 11	7 6	3 9	4 5	5 0	5 8	6 3	6 11	7 6	3 9	4 5	5 0
20	4 2	4 10	5 7	6 3	6 11	7 8	8 4	5 0	5 10	6 8	7 6	8 4	9 2	10 0	5 0	5 10	6 8	7 6	8 4	9 2	10 0	5 0	5 10	6 8
25	5 3	6 1	6 11	7 10	8 8	9 7	10 5	6 3	7 4	8 4	9 5	10 5	11 6	12 6	6 3	7 4	8 4	9 5	10 5	11 6	12 6	6 3	7 4	8 4
30	6 3	7 4	8 4	9 5	10 5	11 6	12 6	7 6	8 9	10 0	11 3	12 6	13 9	15 0	7 6	8 9	10 0	11 3	12 6	13 9	15 0	7 6	8 9	10 0
36	7 6	8 9	10 0	11 3	12 6	13 9	15 0	9 0	10 6	12 0	13 6	15 0	16 6	18 0	9 0	10 6	12 0	13 6	15 0	16 6	18 0	9 0	10 6	12 0
— 1	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 1	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 1
— 2	0 0	0 0	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 2
— 3	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 2	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 2	0 2
— 6	0 1	0 1	0 2	0 2	0 2	0 2	0 3	0 2	0 2	0 2	0 2	0 2	0 3	0 3	0 2	0 2	0 2	0 2	0 2	0 3	0 3	0 3	0 3	0 4

L'ng ft. in	7 Inches Thick by												8 Inches Thick by											
	7 B	8 B	9 B	10 B	11 B	12 B	13 B	8 B	9 B	10 B	11 B	12 B	13 B	14 B	8 B	9 B	10 B	11 B	12 B	13 B	14 B	8 B	9 B	10 B
1	0 4	0 5	0 5	0 6	0 6	0 7	0 8	0 5	0 6	0 7	0 7	0 8	0 9	0 9	0 5	0 6	0 7	0 7	0 8	0 9	0 9	0 5	0 6	0 7
2	0 8	0 9	0 11	1 0	1 1	1 2	1 3	0 11	1 0	1 1	1 3	1 4	1 5	1 7	0 11	1 0	1 1	1 3	1 4	1 5	1 7	0 11	1 0	1 1
3	1 0	1 2	1 4	1 6	1 7	1 9	1 11	1 4	1 6	1 8	1 10	2 0	2 2	2 4	1 4	1 6	1 8	1 10	2 0	2 2	2 4	1 4	1 6	1 8
4	1 4	1 7	1 9	1 11	2 2	2 4	2 6	1 9	2 0	2 3	2 5	2 8	2 11	3 1	1 9	2 0	2 3	2 5	2 8	2 11	3 1	1 9	2 0	2 3
5	1 8	1 11	2 2	2 5	2 8	2 11	3 2	2 3	2 6	2 9	3 1	3 4	3 7	3 11	2 3	2 6	2 9	3 1	3 4	3 7	3 11	2 3	2 6	2 9
6	2 1	2 4	2 8	2 11	3 3	3 6	3 10	2 8	3 0	3 4	3 8	4 0	4 4	4 8	2 8	3 0	3 4	3 8	4 0	4 4	4 8	2 8	3 0	3 4
7	2 5	2 9	3 1	3 5	3 9	4 1	4 5	3 1	3 6	3 11	4 3	4 8	5 1	5 5	3 1	3 6	3 11	4 3	4 8	5 1	5 5	3 1	3 6	3 11
8	2 9	3 1	3 6	3 11	4 3	4 8	5 1	3 7	4 0	4 5	4 11	5 4	5 9	6 3	3 7	4 0	4 5	4 11	5 4	5 9	6 3	3 7	4 0	4 5
9	3 1	3 6	3 11	4 5	4 10	5 3	5 8	4 0	4 6	5 0	5 6	6 0	6 6	7 0	4 0	4 6	5 0	5 6	6 0	6 6	7 0	4 0	4 6	5 0
10	3 5	3 11	4 5	4 10	5 4	5 10	6 4	4 5	5 0	5 7	6 1	6 8	7 3	7 9	4 5	5 0	5 7	6 1	6 8	7 3	7 9	4 5	5 0	5 7
11	3 9	4 3	4 10	5 4	5 11	6 5	6 11	4 11	5 6	6 1	6 9	7 4	7 11	8 7	4 11	5 6	6 1	6 9	7 4	7 11	8 7	4 11	5 6	6 1
12	4 1	4 8	5 3	5 10	6 5	7 0	7 7	5 4	6 0	6 8	7 4	8 0	8 8	9 4	5 4	6 0	6 8	7 4	8 0	8 8	9 4	5 4	6 0	6 8
13	4 5	5 1	5 8	6 4	6 11	7 7	8 3	5 9	6 6	7 3	7 11	8 8	9 5	10 1	5 9	6 6	7 3	7 11	8 8	9 5	10 1	5 9	6 6	7 3
14	4 9	5 5	6 2	6 10	7 6	8 2	8 10	6 3	7 0	7 9	8 8	9 7	10 6	11 5	6 3	7 0	7 9	8 8	9 7	10 6	11 5	6 3	7 0	7 9
15	5 1	5 10	6 7	7 4	8 0	8 9	9 6	6 8	7 6	8 4	9 2	10 0	10 10	11 8	6 8	7 6	8 4	9 2	10 0	10 10	11 8	6 8	7 6	8 4
20	6 10	7 9	8 9	9 10	10 11	11 12	12 13	8 11	10 0	11 12	13 13	14 14	15 15	16 17	8 11	10 0	11 12	13 13	14 14	15 15	16 17	8 11	10 0	11 12
25	8 6	9 9	10 11	12 13	14 15	16 17	18 19	11 12	13 14	15 16	17 18	19 20	20 21	22 23	11 12	13 14	15 16	17 18	19 20	20 21	22 23	11 12	13 14	15 16
30	10 3	11 8	13 2	14 7	16 1	17 6	19 0	13 4	15 0	16 8	18 4	20 0	21 8	23 4	13 4	15 0	16 8	18 4	20 0	21 8	23 4	13 4	15 0	16 8
36	12 3	14 0	15 9	17 6	19 3	21 0	22 9	16 0	18 0	20 0	22 0	24 0	26 0	28 0	16 0	18 0	20 0	22 0	24 0	26 0	28 0	16 0	18 0	20 0
— 1	0 0	0 0	0 0	0 0	0 0	0 1	0 1	0 0	0 1	0 1	0 1	0 1	0 1	0 1	0 0	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1
— 2	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 2
— 3	0 1	0 1	0 1	0 1	0 1	0 2	0 2	0 1	0 2	0 2	0 2	0 2	0 2	0 2	0 1	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2
— 6	0 2	0 2	0 3	0 3	0 3	0 4	0 4	0 3	0 3	0 3	0 4	0 4	0 4	0 5	0 3	0 3	0 3	0 4	0 4	0 4	0 4	0 4	0 4	0 5

If a Timber be LONGER than is contained in the Tables, take twice some LENGTH, or add two LENGTHS together. If the Timber is 26 feet long, add the feet opposite 20 and 6 together.

L'ng ft. in	9 Inches Thick by															10 Inches Thick by														
	9 B	10 B	11 B	12 B	13 B	14 B	15 B	10 B	11 B	12 B	13 B	14 B	15 B	16 B	17 B	10 B	11 B	12 B	13 B	14 B	15 B	16 B	17 B	18 B	19 B	20 B	21 B	22 B	23 B	24 B
1	0 7	0 8	0 8	0 9	0 10	0 11	0 11	0 8	0 9	0 10	0 11	1 0	1 1	1 1	1 1	0 8	0 9	0 10	0 11	1 0	1 1	1 1	1 1	1 1	1 1	1 1	1 1	1 1	1 1	1 1
2	1 2	1 3	1 5	1 6	1 8	1 9	1 11	1 5	1 6	1 8	1 10	1 11	2 1	2 2	2 3	1 5	1 6	1 8	1 10	1 11	2 1	2 2	2 3	2 3	2 3	2 3	2 3	2 3	2 3	2 3
3	1 8	1 11	2 1	2 3	2 5	2 8	2 10	2 1	2 4	2 6	2 9	2 11	3 1	3 2	3 3	2 1	2 4	2 6	2 9	2 11	3 1	3 2	3 3	3 3	3 3	3 3	3 3	3 3	3 3	3 3
4	2 3	2 6	2 9	3 0	3 3	3 6	3 9	2 9	3 1	3 4	3 7	3 11	4 1	4 2	4 3	3 1	3 4	3 7	4 1	4 2	4 3	4 3	4 3	4 3	4 3	4 3	4 3	4 3	4 3	4 3
5	2 10	3 2	3 5	3 9	4 1	4 5	4 8	3 6	3 10	4 2	4 6	4 10	5 3	5 7	5 8	4 2	4 7	5 0	5 5	5 10	6 3	6 8	6 9	6 9	6 9	6 9	6 9	6 9	6 9	6 9
6	3 5	3 9	4 2	4 6	4 11	5 3	5 8	4 2	4 7	5 0	5 5	6 10	7 3	7 8	7 9	5 3	5 8	6 3	6 8	7 3	7 8	8 4	8 11	8 11	8 11	8 11	8 11	8 11	8 11	8 11
7	3 11	4 5	4 10	5 3	5 8	6 2	6 7	4 10	5 4	5 10	6 4	6 10	7 4	7 9	8 0	6 4	6 10	7 4	7 9	8 4	8 11	8 11	8 11	8 11	8 11	8 11	8 11	8 11	8 11	8 11
8	4 6	5 0	5 6	6 0	6 6	7 0	7 6	5 7	6 1	6 8	7 3	7 9	8 4	8 11	9 0	6 8	7 3	7 9	8 4	8 11	9 0	9 5	10 0	10 0	10 0	10 0	10 0	10 0	10 0	10 0
9	5 1	5 6	6 2	6 7	7 4	7 11	8 5	6 3	6 11	7 6	8 2	8 9	9 5	10 0	10 0	7 6	8 2	8 9	9 5	10 0	10 0	10 0	10 0	10 0	10 0	10 0	10 0	10 0	10 0	10 0
10	5 8	6 3	6 11	7 6	8 2	8 9	9 5	6 11	7 8	8 4	9 0	9 9	10 5	11 1	11 1	8 4	9 0	9 9	10 5	11 1	11 1	11 1	11 1	11 1	11 1	11 1	11 1	11 1	11 1	11 1
15	8 5	9 5	10 4	11 3	12 2	13 2	14 1	10 5	11 6	12 6	13 7	14 7	15 8	16 8	16 8	11 6	12 6	13 7	14 7	15 8	16 8	17 8	18 8	19 8	20 8	21 8	22 8	23 8	24 8	25 8
20	11 3	12 6	13 9	15 0	16 3	17 6	18 9	13 11	15 3	16 8	18 1	19 5	20 10	21 3	21 3	15 3	16 8	18 1	19 5	20 10	21 3	22 8	24 1	25 5	26 8	27 8	28 8	29 8	30 8	31 8
25	14 1	15 8	17 2	18 9	20 4	21 11	23 5	17 4	19 1	20 10	22 7	24 4	26 1	27 8	27 8	19 1	20 10	22 7	24 4	26 1	27 8	29 5	31 2	32 8	34 1	35 5	36 8	37 8	38 8	39 8
30	16 11	18 9	20 8	22 6	24 5	26 3	28 2	20 10	22 11	25 0	27 1	29 2	31 3	33 4	33 4	22 11	25 0	27 1	29 2	31 3	33 4	35 5	37 6	39 7	41 7	43 8	45 8	47 8	49 8	51 8
36	20 3	22 6	24 9	27 0	29 3	31 6	33 9	25 0	27 6	30 0	32 6	35 0	37 6	40 0	40 0	27 6	30 0	32 6	35 0	37 6	40 0	42 6	45 0	47 6	50 0	52 6	55 0	57 6	60 0	62 6
1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1
2	0 1	0 1	0 1	0 1	0 2	0 2	0 2	0 1	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 1	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2
3	0 2	0 2	0 2	0 2	0 2	0 2	0 3	0 2	0 2	0 3	0 3	0 3	0 3	0 3	0 3	0 2	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3
6	0 3	0 4	0 4	0 4	0 5	0 5	0 5	0 4	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 4	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5	0 5

L'ng ft. in	11 Inches Thick by																	12 Inches Thick by												
	11 B	12 B	13 B	14 B	15 B	16 B	17 B	12 B	13 B	14 B	15 B	16 B	17 B	18 B	19 B	20 B	21 B	12 B	13 B	14 B	15 B	16 B	17 B	18 B	19 B	20 B	21 B	22 B	23 B	24 B
1	0 10	0 11	1 0	1 1	1 2	1 3	1 4	1 0	1 1	1 2	1 3	1 4	1 5	1 6	1 7	1 8	1 9	1 0	1 1	1 2	1 3	1 4	1 5	1 6	1 7	1 8	1 9	2 0	2 1	2 2
2	1 8	1 10	2 0	2 2	2 4	2 5	2 7	2 0	2 2	2 4	2 6	2 8	2 10	2 12	2 14	2 16	2 18	2 0	2 2	2 4	2 6	2 8	3 0	3 2	3 4	3 6	3 8	4 0	4 2	4 4
3	2 6	2 9	3 0	3 3	3 5	3 8	3 11	3 0	3 3	3 6	3 9	4 0	4 4	4 7	5 0	5 3	5 6	3 0	3 3	3 6	3 9	4 0	4 4	4 7	5 0	5 3	5 6	5 9	6 2	6 5
4	3 4	3 8	4 0	4 3	4 7	4 11	5 2	4 0	4 4	4 8	5 0	5 4	5 8	6 1	6 5	6 9	7 2	4 4	4 8	5 2	5 6	6 0	6 4	6 8	7 1	7 5	7 9	8 3	8 7	9 0
5	4 2	4 7	5 0	5 4	5 9	6 1	6 6	5 0	5 5	5 10	6 3	6 8	7 1	7 6	8 0	8 4	8 8	5 5	6 0	6 5	7 0	7 5	8 0	8 5	9 0	9 5	10 0	10 5	11 0	11 5
6	5 1	5 6	6 0	6 5	6 11	7 4	7 10	6 0	6 6	7 0	7 6	8 0	8 6	9 0	9 6	10 0	10 6	6 6	7 2	7 8	8 4	9 0	9 6	10 2	10 8	11 4	12 0	12 6	13 2	13 8
7	5 11	6 5	6 11	7 6	8 0	8 7	9 1	7 0	7 7	8 2	8 9	9 4	10 0	10 6	11 2	11 8	12 4	7 8	8 4	9 0	9 6	10 2	10 8	11 4	12 0	12 6	13 2	13 8	14 4	15 0
8	6 9	7 4	7 11	8 7	9 2	9 10	10 5	8 0	8 8	9 4	10 0	10 6	11 2	11 8	12 4	13 0	13 6	8 8	9 4	10 0	10 6	11 2	11 8	12 4	13 0	13 6	14 2	14 8	15 4	16 0
9	7 7	8 3	8 11	9 8	10 4	11 0	11 8	9 0	9 10	10 6	11 2	11 8	12 4	13 0	13 6	14 2	14 8	9 10	9 11	10 7	11 3	11 9	12 5	13 1	13 7	14 3	14 9	15 5	16 1	16 7
10	8 5	9 2	9 11	10 8	11 6	12 3	13 0	10 0	10 10	11 8	12 6	13 4	14 2	15 0	15 8	16 6	17 4	10 0	10 11	11 9	12 7	13 5	14 3	15 1	15 9	16 7	17 5	18 3	19 1	19 9
15	12 7	13 9	14 11	16 1	17 2	18 4	19 6	15 0	16 3	17 6	18 9	20 0	21 3	22 6	23 9	25 0	26 3	16 3	17 6	18 9	20 0	21 3	22 6	23 9	25 0	26 3	27 6	28 9	30 0	31 3
20	16 10	18 4	19 10	21 5	22 11	24 5	26 0	20 0	21 8	23 4	25 0	26 8	28 4	30 0	31 8	33 4	35 0	20 0	21 11	23 4	25 0	26 8	28 4	30 0	31 11	33 4	35 0	36 8	38 4	40 0
25	21 0	22 11	24 10	26 9	28 8	30 7	32 6	25 0	27 1	29 2	31 3	33 4	35 5	37 6	39 7	41 8	43 9	25 0	27 11	29 4	31 6	33 8	36 0	38 2	40 4	42 6	44 8	47 0	49 2	51 4
30	25 3	27 6	29 10	32 1	34 5	36 9	39 0	30 0	32 6	35 0	37 6	40 0	42 6	45 0	47 6	50 0	52 6	30 0	32 11	35 4	38 6	41 8	45 0	48 2	51 4	54 6	57 8	61 0	64 2	67 4
36	30 3	33 0	35 9	38 6	41 3	44 0	46 9	36 0	39 0	42 0	45 0	48 0	51 0	54 0	57 0	60 0	63 0	36 0	39 11	42 4	45 6	48 8	52 0	55 2	58 4	61 6	64 8	68 0	71 2	74 4
1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1
2	0 2	0 2	0 2	0 2	0 2	0 2	0 3	0 2	0 2	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 2	0 2	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3
3	0 3	0 3	0 3	0 3	0 3	0 3	0 4	0 3	0 3	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 3	0 3	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4
6	0 5	0 6	0 6	0 6	0 6	0 6	0 7	0 6	0 6	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 6	0 6	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 7	0 7

L'ng ft. in	13 Inches Thick by																	14 Inches Thick by												
	13 B	14 B	15 B	16 B	17 B	18 B	19 B	14 B	15 B	16 B	17 B	18 B	19 B	20 B	21 B	22 B	23 B													
1	1 2	1 3	1 4	1 5	1 6	1 8	1 9	1 4	1 6	1 7	1 8	1 9	1 10	1 11	1 12	1 13	1 14													
2	2 4	2 6	2 9	2 11	3 1	3 3	3 5	2 9	2 11	3 1	3 4	3 6	3 8	3 11	3 13	3 15	3 17													
3	3 6	3 10	4 1	4 4	4 7	4 11	5 2	4 5	4 10	5 1	5 5	5 8	5 11	5 14	5 17	5 20	5 23													
4	4 8	5 1	5 5	5 9	6 2	6 6	6 10	5 5	5 10	6 3	6 7	7 0	7 5	7 9	8 2	8 6	8 10													
5	5 10	6 4	6 9	7 3	7 8	8 2	8 7	6 10	7 4	7 9	8 3	8 8	9 3	9 7	10 1	10 5	10 9													
6	7 1	7 7	8 2	8 8	9 3	9 9	10 4	8 2	8 9	9 4	9 11	10 6	11 1	11 8	12 3	12 9	13 4													
7	8 3	8 10	9 6	10 1	10 9	11 5	12 0	9 6	10 3	10 11	11 7	12 3	12 11	13 7	14 3	15 0	15 7													
8	9 5	10 1	10 10	11 7	12 3	13 0	13 9	10 11	11 8	12 5	13 3	14 0	14 9	15 7	16 5	17 3	18 1													
9	10 7	11 5	12 2	13 0	13 10	14 8	15 5	12 3	13 2	14 0	14 11	15 9	16 8	17 6	18 5	19 4	20 2													
10	11 9	12 8	13 7	14 5	15 4	16 3	17 2	13 7	14 7	15 7	16 6	17 6	18 6	19 5	20 5	21 5	22 4													
15	17 7	19 0	20 4	21 8	23 0	24 5	25 9	20 5	21 11	23 4	24 10	26 3	27 9	29 2	30 8	32 1	33 7													
20	23 6	25 3	27 1	28 11	30 8	32 6	34 4	27 3	29 2	31 3	33 5	35 8	38 1	40 4	42 7	45 0	47 3													
25	29 4	31 7	33 10	36 1	38 4	40 8	42 11	34 0	36 6	38 11	41 4	44 3	46 8	49 2	51 6	54 0	56 4													
30	35 3	37 11	40 8	43 6	46 1	48 9	51 6	40 10	43 8	46 8	49 7	52 6	55 5	58 4	61 3	64 2	67 1													
36	42 3	45 6	48 9	52 0	55 3	58 6	61 9	49 0	52 6	56 0	59 6	63 0	66 6	70 0	73 6	77 1	80 7													
1	0 1	0 1	0 1	0 1	0 2	0 2	0 2	0 1	0 1	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2													
2	0 2	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 4	0 4	0 4	0 4	0 4													
3	0 4	0 4	0 4	0 4	0 4	0 5	0 5	0 4	0 4	0 5	0 5	0 5	0 5	0 5	0 5	0 6	0 6													
6	0 7	0 8	0 8	0 9	0 9	0 10	0 10	0 8	0 9	0 10	0 10	0 11	0 11	0 11	0 11	0 11	0 11													

Suppose a Package 9 feet, long 4 feet broad and 20 inches thick? opposite 9 and under 24 inches we find 30, which doubled gives 60 feet,—the answer. If the Timber or Package is of larger breadth or thickness than is contained in the Table, add two numbers together.

L'ng ft. in	15 Inches Thick by											16 Inches Thick by										
	15 B	16 B	17 B	18 B	19 B	20 B	21 B	16 B	17 B	18 B	19 B	20 B	21 B	22 B	23 B							
1	1 7	1 8	1 9	1 11	2 0	2 1	2 2	1 9	1 11	2 0	2 1	2 3	2 2	2 5								
2	3 2	3 4	3 7	3 9	4 0	4 2	4 5	3 7	3 9	4 0	4 3	4 5	4 4	4 11								
3	4 8	5 0	5 4	5 8	5 11	6 3	6 7	5 4	5 8	6 0	6 4	6 8	7 8	7 4								
4	6 3	6 8	7 1	7 6	7 11	8 4	8 9	7 1	7 7	8 0	8 5	8 11	9 0	9 9								
5	7 10	8 4	8 10	9 5	9 11	10 5	10 11	8 11	9 5	10 0	10 7	11 1	11 4	12 3								
6	9 5	10 0	10 10	11 3	11 11	12 6	13 2	10 8	11 4	12 0	12 8	13 4	14 8	14 8								
7	10 11	11 8	12 5	13 2	13 10	14 7	15 4	12 5	13 3	14 0	14 9	15 7	16 0	17 1								
8	12 6	13 4	14 2	15 0	15 10	16 8	17 6	14 3	15 1	16 0	16 11	17 9	18 4	19 7								
9	14 1	15 0	15 11	16 11	17 10	18 9	19 8	16 0	17 0	18 0	19 0	20 0	21 8	22 0								
10	15 8	16 8	17 9	18 9	19 10	20 10	21 11	17 9	18 11	20 0	21 1	22 3	23 3	24 5								
15	23 5	25 0	26 7	28 2	29 8	31 3	32 10	26 8	28 4	30 0	31 8	33 4	35 1	36 8								
20	31 3	33 4	35 5	37 6	39 7	41 8	43 9	35 7	37 9	40 0	42 3	44 5	46 8	48 11								
25	39 1	41 8	44 3	46 11	49 6	52 1	54 8	44 5	47 3	50 0	52 8	55 5	58 8	61 1								
30	46 11	50 0	53 2	56 3	59 5	62 6	65 8	53 4	56 6	60 0	63 3	66 6	70 4	73 4								
36	56 3	60 0	63 9	67 6	71 3	75 0	78 9	64 0	68 0	72 0	76 0	80 0	84 0	88 0								
—	1 0	2 0	2 0	2 0	2 0	2 0	2 0	0 2	0 2	0 2	0 2	0 2	0 2	0 2								
—	0 3	0 3	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 4	0 5								
—	3 0	5 0	5 0	5 0	6 0	6 0	6 0	0 5	0 6	0 6	0 6	0 7	0 7	0 7								
—	6 0	9 0	10 0	11 0	11 0	1 0	1 1	0 11	0 11	1 0	1 1	1 1	1 1	1 3								

L'ng ft. in	17 Inches Thick by											18 Inches Thick by															
	17 B	18 B	19 B	20 B	21 B	22 B	23 B	24 B	25 B	26 B	27 B	18 B	19 B	20 B	21 B	22 B	23 B	24 B	25 B	26 B	27 B						
1	2	0	2	2	2	3	2	4	2	6	2	7	2	9	2	3	2	5	2	6	2	8	2	9	2	11	
2	4	0	4	3	4	6	4	9	5	0	5	2	5	5	4	6	4	9	5	0	5	3	5	6	5	9	
3	6	0	6	5	6	9	7	1	7	5	7	10	8	2	6	9	0	7	2	7	6	7	11	8	3	8	
4	8	0	8	6	9	0	9	5	9	11	10	5	10	10	9	0	0	6	10	0	10	6	11	0	11	6	
5	10	0	10	8	11	3	11	10	12	5	13	0	13	7	11	3	11	11	12	6	13	2	13	9	14	5	
6	12	1	12	9	13	6	14	2	14	11	15	7	16	4	13	6	14	3	15	0	15	9	16	6	17	3	
7	14	1	14	11	15	8	16	6	17	4	18	2	19	0	15	9	16	8	17	6	18	5	19	3	20	0	
8	16	1	17	0	17	11	18	11	19	10	20	9	21	9	18	0	19	0	20	0	21	0	22	0	23	0	
9	18	1	19	2	20	2	21	3	22	4	23	5	24	5	20	3	21	5	22	6	23	8	24	9	25	11	
10	20	1	21	3	22	5	23	7	24	10	26	0	27	2	22	6	23	9	25	0	26	3	27	6	28	9	
15	30	1	31	11	33	8	35	5	37	2	39	0	40	9	33	9	35	8	37	6	39	5	41	3	43	2	
20	40	2	42	6	44	10	47	3	49	7	51	11	54	4	45	0	47	6	50	0	52	6	55	0	57	6	
25	50	2	53	2	56	1	59	0	62	0	64	11	67	11	56	3	59	5	62	6	65	8	68	9	71	11	
30	60	3	63	9	67	4	70	10	74	5	77	11	81	6	67	6	71	3	75	0	78	9	82	6	86	3	
36	72	3	76	6	80	9	85	0	89	3	93	6	97	9	81	0	85	6	90	0	94	6	99	0	103	6	
—	1	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	2	0	2	0	3	0	3	0	3	0	3
—	2	0	4	0	4	0	4	0	5	0	5	0	5	0	5	0	5	0	5	0	5	0	6	0	6	0	6
—	3	0	6	0	6	0	7	0	7	0	7	0	8	0	8	0	7	0	7	0	8	0	8	0	8	0	9
—	6	1	0	1	1	1	1	2	1	3	1	4	1	4	1	2	1	2	1	3	1	4	1	5	1	5	

L'ng ft. in	19 Inches Thick by											20 Inches Thick by										
	19 B	20 B	21 B	22 B	23 B	24 B	20 B	21 B	22 B	23 B	24 B	25 B										
1	2 6	2 8	2 9	2 11	3 0	3 2	2 9	2 11	3 1	3 2	3 4	3 6										
2	5 0	5 3	5 7	5 10	6 1	6 4	5 7	5 10	6 1	6 5	6 8	6 11										
3	7 6	7 11	8 4	8 9	9 1	9 6	8 4	8 9	9 2	9 7	10 0	10 5										
4	10 0	10 7	11 1	11 7	12 2	12 8	11 1	11 8	12 3	12 9	13 4	13 11										
5	12 6	13 2	13 10	14 6	15 2	15 10	13 11	14 7	15 3	16 0	16 8	17 4										
6	15 1	15 10	16 8	17 5	18 3	19 0	16 8	17 6	18 4	19 2	20 0	20 10										
7	17 7	18 6	19 5	20 4	21 3	22 2	19 5	20 5	21 5	22 4	23 4	24 4										
8	20 1	21 1	22 2	23 3	24 3	25 4	22 3	23 4	24 5	25 5	26 8	27 9										
9	22 7	23 9	24 11	26 2	27 4	28 6	25 0	26 3	27 6	28 9	30 0	31 3										
10	25 1	26 5	27 9	29 0	30 4	31 8	27 9	29 2	30 7	31 11	33 4	34 9										
15	37 7	39 1	41 7	43 7	45 6	47 6	41 8	43 9	45 10	47 11	50 0	52 1										
20	50 2	52 5	55 5	58 1	60 8	63 4	55 7	58 4	61 1	63 11	66 8	69 5										
25	62 8	66 0	69 3	72 7	75 10	79 2	69 5	72 11	76 5	79 10	83 4	86 10										
30	75 3	79 2	83 2	87 1	91 1	95 0	83 4	87 2	91 8	95 10	100 0	104 2										
36	90 3	95 0	99 9	104 6	109 3	114 0	100 0	105 0	110 0	115 0	120 0	125 0										
1	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3	0 3										
2	0 5	0 5	0 6	0 6	0 6	0 6	0 6	0 6	0 6	0 6	0 7	0 7										
3	0 8	0 8	0 8	0 9	0 9	0 10	0 8	0 9	0 9	0 10	0 10	0 10										
4	1 3	1 4	1 5	1 5	1 6	1 7	1 5	1 6	1 6	1 7	1 8	1 9										

PLANK AND SCANTLING MEASURE.

If a Plank be longer than is represented in the Tables, then take *twice* some length. If shorter take $\frac{1}{2}$ or $\frac{1}{4}$ of some length.

L'ng Ft.	2 Inches Thick, by 10 to 28 Inches Wide.																												
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28										
13	22	24	26	28	30	33	35	37	39	41	43	46	48	50	52	54	56	59	61	63	65	68	70	72	74	76	78	81	84
14	23	26	28	30	33	35	37	40	42	44	47	49	51	54	56	58	61	63	65	68	70	73	75	77	79	82	86	89	93
15	25	28	30	33	35	38	40	43	45	48	50	53	55	58	60	63	65	68	70	73	75	78	81	84	87	90	94	98	102
16	27	29	33	35	37	40	43	45	48	51	53	56	59	61	64	67	69	72	75	78	81	84	87	90	93	96	100	104	108
17	28	31	34	37	40	43	45	48	51	54	57	60	62	65	68	71	74	77	79	82	86	89	92	95	99	103	107	111	115
18	30	33	36	39	42	45	48	51	54	57	60	63	66	69	72	75	78	81	84	87	90	93	96	100	104	108	112	116	120
19	32	35	38	41	44	48	51	54	57	60	63	67	70	73	76	79	82	86	89	92	95	99	103	107	111	115	119	123	127
20	33	37	40	43	47	50	53	57	60	63	67	70	73	77	80	83	87	90	93	97	101	105	109	113	117	121	125	129	133
21	35	39	42	46	49	53	56	60	63	67	70	74	77	81	84	88	91	95	98	102	106	110	114	118	122	126	130	134	138
22	37	40	44	48	51	55	59	62	66	70	73	77	81	84	88	92	96	100	104	108	112	116	120	124	128	132	136	140	144
23	38	42	46	50	54	58	61	65	69	73	77	81	84	88	92	96	100	104	108	112	116	120	124	128	132	136	140	144	148
24	40	44	48	52	56	60	64	68	72	76	80	84	88	92	96	100	104	108	112	116	120	124	128	132	136	140	144	148	152
25	42	46	50	54	58	63	67	71	75	79	83	88	92	96	100	104	108	113	117	121	125	129	133	137	141	145	149	153	157
26	43	48	52	56	61	65	69	74	78	82	87	91	95	100	104	108	113	117	121	125	129	133	137	141	145	149	153	157	161
27	45	50	54	59	63	68	72	77	81	86	90	95	99	104	108	113	117	122	126	130	134	138	142	146	150	154	158	162	166
28	47	51	56	61	65	70	75	79	84	89	93	98	103	107	112	117	121	126	131	135	139	143	147	151	155	159	163	167	171
29	48	53	58	63	68	73	77	82	87	92	97	102	106	111	116	121	126	131	135	139	143	147	151	155	159	163	167	171	175
30	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130	135	140	144	148	152	156	160	164	168	172	176	180

L'ng Ft.	2 1-2 Inches Thick by 10 to 27 Inches Wide.																											
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27										
13	27	30	33	35	38	41	43	46	49	51	54	57	60	62	65	68	70	73										
14	29	32	35	38	41	44	47	50	53	55	58	61	64	67	70	73	76	79										
15	31	34	38	41	44	47	50	53	56	59	63	66	69	72	75	78	81	84										
16	33	37	40	43	47	50	53	57	60	63	67	70	73	77	80	83	87	90										
17	35	39	43	46	50	53	57	60	64	67	71	74	78	81	85	89	92	96										
18	38	41	45	49	53	56	60	64	68	71	75	79	83	86	90	94	98	101										
19	40	44	48	51	55	59	63	67	71	75	79	83	87	91	95	99	103	107										
20	42	46	50	54	58	63	67	71	75	79	83	88	92	96	100	104	108	113										
21	44	48	53	57	61	66	70	74	79	83	88	92	96	101	106	109	114	118										
22	46	50	55	60	64	69	73	78	83	87	92	96	101	105	110	115	119	124										
23	48	53	58	62	67	72	77	81	86	91	96	101	105	110	115	120	125	129										
24	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130	135										
25	52	57	63	68	73	78	83	89	94	99	104	109	115	120	125	130	135	141										
26	54	60	65	70	76	81	87	92	98	103	108	114	119	125	130	135	141	146										
27	56	62	68	73	79	84	90	96	101	107	113	118	124	129	135	141	146	152										
28	58	64	70	76	82	88	93	99	105	111	117	123	128	134	140	146	152	158										
29	60	66	73	79	85	91	97	103	109	115	121	127	133	139	145	151	157	163										
30	63	69	75	81	88	94	100	106	113	119	125	131	138	144	150	156	163	169										

L'ng Ft.	3 Inches Thick by 10 to 27 Inches Wide.																										
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26										
13	33	36	39	42	46	49	52	55	59	62	65	68	72	75	78	81	85										
14	35	39	42	46	49	53	56	60	63	67	70	74	77	81	84	88	91										
15	38	41	45	49	51	56	60	64	68	71	75	79	83	86	90	94	98										
16	40	44	48	52	56	60	64	68	72	76	80	84	88	92	96	100	104										
17	43	47	51	55	60	64	68	72	77	81	85	89	94	98	102	106	111										
18	45	50	54	59	63	68	72	77	81	86	90	95	99	104	108	113	117										
19	48	52	57	62	67	71	76	81	86	90	95	100	105	109	114	119	124										
20	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130										
21	53	58	63	68	74	79	84	89	95	100	105	110	116	121	127	132	138										
22	55	61	66	72	77	83	88	94	99	105	110	116	121	127	132	138	144										
23	58	63	69	75	81	86	92	98	104	109	115	121	127	132	138	144	150										
24	60	66	72	78	84	90	96	102	108	114	120	126	132	138	144	150	156										
25	63	69	75	81	88	94	100	106	113	119	125	131	138	144	150	156	163										
26	65	72	78	85	91	98	104	111	117	124	130	137	143	150	156	163	169										
27	68	74	81	88	95	101	108	115	122	128	135	142	149	155	162	169	176										
28	70	77	84	91	98	105	112	119	126	133	140	147	154	161	168	175	182										
29	73	80	87	94	102	109	116	123	131	138	145	152	160	167	174	181	189										
30	75	83	90	98	105	113	120	128	135	143	150	158	165	173	180	188	195										

PLANK AND SCANTLING MEASURE.

If a Plank, or Scantling, be longer than is represented in the Tables, take twice some length given in the Tables, or add two lengths together; if wider, take two widths; if both longer and wider, double the contents of such number in the Tables as will give the same length and width required.

L'ng Ft.	3 1-2 Inches Thick by 10 to 26 Inches Wide.																									
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26									
13	38	42	46	49	53	57	61	64	68	72	76	80	83	87	91	95	99									
14	41	45	49	53	57	61	65	69	74	78	82	86	90	94	98	102	106									
15	44	48	53	57	61	66	70	74	79	83	88	92	96	101	105	109	114									
16	47	51	56	61	65	70	75	79	84	89	93	98	103	107	112	117	121									
17	50	55	60	64	69	74	79	84	89	94	99	104	109	114	119	124	129									
18	53	58	63	68	74	79	84	89	95	100	105	110	116	121	126	131	137									
19	55	61	67	72	78	83	89	94	100	105	111	116	122	127	133	139	144									
20	58	64	70	76	82	88	93	99	105	111	117	123	128	134	140	146	151									
21	61	67	74	80	86	92	98	104	110	116	123	129	135	141	147	153	159									
22	64	71	77	83	90	96	103	109	116	122	128	135	141	148	154	160	167									
23	67	74	81	87	94	101	107	114	121	127	134	141	148	154	161	168	174									
24	70	77	84	91	98	105	112	119	126	133	140	147	154	161	168	175	182									
25	73	80	88	95	102	109	117	124	131	139	146	153	160	168	175	182	190									
26	76	83	91	99	106	114	121	129	137	144	152	159	167	174	182	190	197									
27	79	87	95	102	110	118	125	134	142	150	158	165	173	181	189	197	205									
28	82	90	98	106	114	123	131	139	147	155	163	172	180	188	196	204	212									
29	85	93	102	110	118	127	135	144	152	161	169	178	186	195	203	211	220									
30	88	96	105	114	123	131	140	149	158	166	175	184	193	201	210	219	228									

L'ng Ft.	4 Inches Thick by 10 to 26 Inches Wide.																									
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26									
13	43	48	52	56	61	65	69	74	78	82	87	91	95	100	104	108	113									
14	47	51	56	61	65	70	75	79	84	89	93	98	103	107	112	117	121									
15	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120	125	130									
16	53	58	64	69	75	80	85	91	96	101	107	112	117	123	128	133	139									
17	57	62	68	74	79	85	91	96	102	108	113	119	125	130	136	142	147									
18	60	66	72	78	84	90	96	102	108	114	120	126	132	138	144	150	156									
19	63	70	76	82	89	95	101	108	114	120	127	133	139	146	152	158	165									
20	67	73	80	87	93	100	107	113	120	127	133	140	147	153	160	167	173									
21	70	77	84	91	98	105	112	119	126	133	140	147	154	161	168	175	182									
22	73	81	88	95	103	110	117	125	132	139	147	154	161	169	176	183	191									
23	77	84	92	100	107	115	123	130	138	146	153	161	169	176	184	192	199									
24	80	88	96	104	112	120	128	136	144	152	160	168	176	184	192	200	208									
25	83	92	100	108	117	125	133	142	150	158	167	175	183	192	200	208	217									
26	87	95	104	113	121	130	139	147	156	165	173	182	191	199	208	217	225									
27	90	99	109	117	126	135	144	153	162	171	180	189	198	207	216	225	234									
28	93	103	112	121	131	140	149	159	168	177	187	196	205	215	224	233	243									
29	97	106	116	126	135	145	155	164	174	184	193	203	213	222	232	242	251									
30	100	110	120	130	140	150	160	170	180	190	200	210	220	230	240	250	260									

L'ng Ft.	5 Inches Thick by 10 to 26 Inches Wide.																									
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26									
13	54	60	65	70	76	81	87	92	98	103	108	114	119	125	130	135	141									
14	58	64	70	76	82	88	93	99	105	111	117	123	128	134	140	146	152									
15	63	69	75	81	88	94	100	106	113	119	125	131	137	144	150	156	163									
16	67	73	80	87	93	100	107	113	120	127	133	140	147	153	160	167	173									
17	71	78	85	92	99	106	113	120	128	135	142	149	156	163	170	177	184									
18	75	83	90	98	105	113	120	128	135	143	150	158	165	173	180	188	195									
19	79	87	95	103	111	119	127	135	143	150	158	166	174	182	190	198	206									
20	83	92	100	108	117	125	133	142	150	158	167	175	183	192	200	208	217									
21	88	96	105	114	123	131	140	149	158	166	175	184	193	201	210	219	228									
22	92	101	110	119	128	138	147	156	165	174	183	193	202	211	220	229	238									
23	96	105	115	125	134	144	153	163	173	182	192	201	211	220	230	240	249									
24	100	110	120	130	140	150	160	170	180	190	200	210	220	230	240	250	260									
25	104	115	125	135	146	156	167	177	188	198	208	219	229	240	250	260	271									
26	108	119	130	141	152	163	173	184	195	206	217	228	238	249	260	271	282									
27	113	124	135	146	158	169	180	191	203	214	225	236	248	259	270	281	293									
28	117	128	140	152	163	175	187	198	210	222	233	245	257	268	280	292	304									
29	121	133	145	157	169	181	193	205	218	230	242	254	266	278	290	302	314									
30	125	138	150	163	175	188	200	213	225	238	250	263	275	288	300	313	323									

SCANTLING AND TIMBER MEASURE

REDUCED TO ONE INCH BOARD MEASURE.

EXPLANATION. — To ascertain the number of Feet of Scantling or Timber, say 18 Feet Long and 2 by 3 Inches. Find 2 by 3 in the top columns, and 18 in the left hand column, and under 2 by 3 and against 18 is 9 feet.

If the Scantling is longer than contained in the Table, add two lengths together. If shorter take part of some length.

The preceding pages also contain Scantling and Plank Measure.

	Thickness and Width in Inches.																		
Feet.	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.3	3.4	3.5	3.6	3.7	3.8	3.9	4.4	4.5		
6	2.	3.	4.	5.	6.	7.	8.	9.	4.6	6.	7.6	9.	10.6	12.	13.6	8.	10.		
7	2.4	3.6	4.8	5.10	7.	8.2	9.4	10.6	5.3	7.	8.9	10.6	12.3	14.	15.9	9.4	11.8		
8	2.8	4.	5.4	6.8	8.	9.4	10.8	12.	6.	8.	10.	12.	14.	16.	18.	10.8	13.4		
9	3.	4.6	6	7.6	9.	10.6	12.	13.6	6.9	9.	11.3	13.6	15.9	18.	20.3	12.	15.		
10	3.4	5.	6.8	8.4	10.	11.8	13.4	15.	7.6	10.	12.6	15.	17.6	20.	22.6	13.4	16.8		
11	3.8	5.6	7.4	9.2	11.	12.10	14.8	16.6	8.3	11.	13.9	16.6	19.3	22.	24.9	14.8	18.4		
12	4.	6.	8.	10.	12.	14.	16.	18.	9.	12.	15.	18.	21.	24.	27.	16.	20.		
13	4.4	6.6	8.8	10.10	13.	15.2	17.4	19.6	9.9	13.	16.3	19.6	22.9	26.	29.3	17.4	21.8		
14	4.8	7.	9.4	11.8	14.	16.4	18.8	21.	10.6	14.	17.6	21.	24.6	28.	31.6	18.8	23.4		
15	5.	7.6	10.	12.6	15.	17.6	20.	22.6	11.3	15.	18.9	22.6	26.3	30.	33.9	20.	25.		
16	5.4	8.	10.8	13.4	16.	18.8	21.4	24.	12.	16.	20.	24.	28.	32.	36.	21.4	26.8		
17	5.8	8.6	11.4	14.2	17.	19.10	22.8	25.6	12.9	17.	21.3	25.6	29.9	34.	38.3	22.8	28.4		
18	6.	9.	12	15.	18.	21.	24.	27.	13.6	18.	22.6	27.	31.6	36.	40.6	24.	30.		
19	6.4	9.6	12.8	15.10	19.	22.2	25.4	28.6	14.3	19.	23.9	28.6	33.3	38.	42.9	25.4	31.8		
20	6.8	10.	13.4	16.8	20.	23.4	26.8	30.	15.	20.	25.	30.	35.	40.	45.	26.8	33.4		
21	7.	10.6	14.	17.6	21.	24.6	28.	31.6	15.9	21.	26.3	31.6	36.9	42.	47.3	28.	35.		
22	7.4	11.	14.8	18.4	22.	25.8	29.4	33.	16.6	22.	27.6	33.	38.6	44.	49.6	29.4	36.8		
23	7.8	11.6	15.4	19.2	23.	26.10	30.8	34.6	17.3	23.	28.9	34.6	40.3	46.	51.9	30.8	38.4		
24	8.	12.	16.	20.	24.	28.	32.	36.	18.	24.	30.	36.	42.	48.	54.	32.	40.		
25	8.4	12.6	16.8	20.10	25.	29.2	33.4	37.6	18.9	25.	31.3	37.6	43.9	50.	56.3	33.4	41.8		
30	10.	15.	20.	25.	30.	35.	40.	45.	22.6	30.	37.6	45.	52.6	60.	67.6	40.	50.		
34	11.4	17	22.8	28.4	34.	39.8	45.4	51.	25.6	34.	42.6	51.	59.6	68.	76.6	45.4	56.8		
40	13.4	20.	26.8	33.4	40.	46.8	53.4	60.	30.0	40.	50.	60.	70.	80.	90.	53.4	66.8		

Feet.	Thickness and Width in Inches.														
	4.6	4.7	4.8	4.9	5.5	5.6	5.7	5.8	5.9	6.6	6.7	6.8	6.9	6.10	
6	12.	14.	16.	18.	12.6	15.	17.6	20.	22.6	18.	21.	24.	27.	30.	
7	14.	16.4	18.8	21.	14.7	17.6	20.5	23.4	26.3	21.	24.6	28.	31.6	35.	
7	16.	18.8	21.4	24.	16.8	20.	23.4	26.8	30.	24.	28.	32.	36.	40.	
9	18.	21.	24.	27.	18.9	22.6	26.3	30.	33.9	27.	31.6	36.	40.6	45	
10	20.	23.4	26.8	30.	20.10	25.	29.2	33.4	37.6	30.	35.	40	45.	50.	
11	22.	25.8	29.4	33.	22.11	27.6	32.1	36.8	41.3	33.	38.6	44.	49.6	55.	
12	24.	28.	32.	36.	25.	30.	35.	40.	45.	36.	42.	48.	54.	60.	
13	26.	30.4	34.8	39.	27.1	32.6	37.11	43.4	48.9	39.	45.6	52.	58.6	65.	
14	28.	32.8	37.4	42.	29.2	35.	40.10	46.8	52.6	42.	49.	56.	63.	70.	
15	30.	35.	40.	45.	31.3	37.6	43.9	50.	56.3	45.	52.6	60.	67.6	75.	
16	32.	37.4	42.8	48.	33.4	40.	46.8	53.4	60.	48.	56.	64.	72.	80.	
17	34.	39.8	45.4	51.	35.5	42.6	49.7	56.8	63.9	51.	59.6	68.	76.6	85.	
18	36.	42.	48.	54.	37.6	45.	52.6	60.	67.6	54.	63.	72.	81.	90.	
19	38.	44.4	50.8	57.	39.7	47.6	55.5	63.4	71.3	57.	66.6	76.	85.6	95.	
20	40.	46.8	53.4	60.	41.8	50.	58.4	66.8	75.	60.	70.	80.	90.	100.	
21	42.	49.	56.	63.	43.9	52.6	61.3	70.	78.9	63.	73.6	84.	94.6	105.	
22	44.	51.4	58.8	66.	45.10	55.	64.2	73.4	82.6	66.	77.	88.	99.	110.	
23	46.	53.8	61.4	69.	47.11	57.6	67.1	76.8	86.3	69.	80.6	92.	103.6	115.	
24	48.	56.	64.	72.	50.	60.	70.	80.	90.	72.	84.	96.	108.	120.	
25	50.	58.4	66.8	75.	52.1	62.6	72.11	83.4	93.9	75.	87.6	100.	112.6	125.	
30	60.	70.	80.	90.	62.6	75.	87.6	100.	112.6	90.	105.	120.	135.	150.	
34	68.	79.4	90.8	102.	70.10	85.	99.2	113.4	127.6	102.	119.	136.	153.	170.	
40	80	93.4	106.8	120.	83.4	100.	116.8	133.4	150.	120.	140.	160.	180.	200.	

Thickness and Width in Inches.													
Feet.	6-11	6-12	7-7	7-8	7-9	7-10	7-11	7-12	8-8	8-9	8-10	8-11	8-12
6	33.	36.	24.6	26.	31.6	35.	38.6	42.	32.	36.	40.	44.	48.
7	38.6	42.	28.7	32.8	36.9	40.10	44.11	49.	37.4	42.	46.8	51.4	56.
8	44.	48.	32.8	37.4	42.	46.8	51.4	56.	42.8	48.	53.4	58.8	64.
9	49.6	54.	36.9	42.	47.3	52.6	57.9	63.	48.	54.	60.	66.	72.
10	55.	60.	40.10	46.8	52.6	58.4	64.2	70.	53.4	60.	66.8	73.4	80.
11	60.6	66.	44.11	51.4	57.9	64.2	70.7	77.	58.8	66.	73.4	80.8	88.
12	66.	72.	49.	56.	63.	70.	77.	84.	64.	72.	80.	88.	96.
13	71.6	78.	53.1	60.8	68.3	75.10	83.5	91.	69.4	78.	86.8	95.4	104.
14	77.	84.	57.2	65.4	73.6	81.8	89.10	98.	74.8	84.	93.4	102.8	112.
15	82.6	90.	61.3	70.	78.9	87.6	96.3	105.	80.	90.	100.	110.	120.
16	88.	96.	65.4	74.8	84.	93.4	102.8	112.	85.4	96.	106.8	117.4	128.
17	93.6	102.	69.5	79.4	89.3	99.2	109.1	119.	90.8	102.	113.4	124.8	136.
18	99.	108.	73.6	84.	94.6	105.	115.6	126.	96.	108.	120.	132.	144.
19	104.6	114.	77.7	88.8	99.9	110.10	121.11	133.	101.4	114.	126.8	139.4	152.
20	110.	120.	81.8	93.4	105.	116.8	128.4	140.	106.8	120.	133.4	146.8	160.
21	115.6	126.	85.9	98.	110.3	122.6	134.9	147.	112.	126.	140.	154.	168.
22	121.	132.	89.10	102.8	115.6	128.4	141.2	154.	117.4	132.	146.8	161.4	176.
23	126.6	138.	93.11	107.4	120.9	134.2	147.7	161.	122.8	138.	153.4	168.8	184.
24	132.	144.	98.	112.	126.	140.	154.	168.	128.	144.	160.	176.	192.

Feet.	Thickness and Width in Inches.											
	9-9	9-10	9-11	9-12	10-10	10-11	10-12	11-11	11-12	12-12	12-13	12-14
6	40.6	45.	49.6	54.	50.	55.	60.	60.6	66.	72.	78.	84.
7	47.3	52.6	57.9	63.	58.4	64.2	70.	70.7	77.	84.	91.	98.
8	54.	60.	66.	72.	66.8	73.4	80.	80.8	88.	96.	104.	112.
9	60.9	67.6	74.3	81.	75.	82.6	90.	90.9	99.	108.	117.	126.
10	67.6	75.	82.6	90.	83.4	91.8	100.	100.10	110.	120.	130.	140.
11	74.3	82.6	90.9	99.	91.8	100.10	110.	110.11	121.	132.	143.	154.
12	81.	90.	99.	108.	100.	110.	120.	121.	132.	144.	156.	168.
13	87.9	97.6	107.3	117.	108.4	119.2	130.	131.1	143.	156.	169.	182.
14	94.6	105.	115.6	126.	116.8	128.4	140.	141.2	154.	168.	182.	196.
15	101.3	112.6	123.9	135.	125.	137.6	150.	151.3	165.	180.	195.	210.
16	108.	120.	132.	144.	133.4	146.8	160.	161.4	176.	192.	208.	224.
17	114.9	127.6	140.3	153.	141.8	155.10	170.	171.5	187.	204.	221.	238.
18	121.6	135.	148.6	162.	150.	165.	180.	181.6	198.	216.	234.	252.
19	128.3	142.6	156.9	171.	158.4	174.2	190.	191.7	209.	228.	247.	266.
20	135.	150.	165.	180.	166.8	183.4	200.	201.8	220.	240.	260.	280.
21	141.9	157.6	173.3	189.	175.	192.6	210.	211.9	231.	252.	273.	294.
22	148.6	165.	181.6	198.	183.4	201.8	220.	221.10	242.	264.	286.	308.
23	155.3	172.6	189.9	207.	191.8	210.10	230.	231.11	253.	276.	299.	322.
24	162.	180.	198.	216.	200.	220.	240.	242.	264.	288.	312.	336.

<i>Thickness and Width in Inches.</i>											
Feet.	12.15	12.16	13.13	13.14	13.15	13.16	14.14	14.15	14.16	15.15	15.16
6	90.	96.	84.6	91.	97.6	104.	.98	105.	112.	112.6	120.
7	105	112.	98.7	106.2	113.9	121.4	114.4	122.6	130.8	131.3	140.
8	120.	128.	112.8	121.4	130.	138.8	130.8	140.	149.4	150.	160.
9	135.	144.	126.9	136.6	146.3	156.	147.	157.6	168.	168.9	180.
10	150.	160.	140.10	151.8	162.6	173.4	163.4	175.	186.8	187.6	200.
11	165.	176	154.11	166.10	178.9	190.8	179.8	192.6	205.4	206.3	220.
12	180.	192.	169.	182.	195.	208.	196.	210.	224.	225.	240.
13	195.	208.	183.1	197.2	211.3	225.4	212.4	227.6	242.8	243.9	260.
14	210.	224.	197.2	212.4	227.6	242.8	228.8	245.	261.4	262.6	280.
15	225.	240.	211.3	227.6	243.9	260.	245.	262.6	280.	281.3	300.
16	240.	256.	225.4	242.8	260.	277.4	261.4	280.	298.8	300.	320.
17	255.	272.	239.5	257.10	276.3	294.8	277.8	297.6	317.4	318.9	340.
18	270.	288.	243.6	273.	292.6	312.	290.	314.	336.	337.6	360.
19	285.	304.	257.7	288.2	308.9	329.4	310.4	332.6	354.8	356.3	380.
20	300.	320.	271.8	303.4	325.	346.8	326.8	350.	373.4	375.	400.
21	315.	336.	285.9	318.6	341.3	364.	343.	367.6	392.	393.9	420.
22	330.	352.	299.10	333.8	357.6	381.4	359.4	385.	410.8	412.6	440.
23	345.	368.	313.11	348.10	373.9	398.8	375.8	402.6	429.4	431.3	460.
24	360.	384.	338.	364.	390.	416.	392.	420.	448.	450.	480.

BOARD AND PLANK MEASUREMENT — AT SIGHT.

This Table gives the Square Feet and Inches in Boards from 6 to 25 inches wide and from 8 to 36 feet long. If a board be longer than 36 feet, unite two numbers. For instance, if a Board is 40 feet long and 16 inches wide—add 30 and 10 and you have 53 ft. 4 in. For 2 inch Plank double the product. See also Board Table, p. 84.

Feet Long.	6 in W	7 in W	8 in W	9 in W	10 in W	11 in W	12 in W	13 in W	14 in W	15 in W
	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.
8	4 0	4 3	5 4	6 0	6 8	7 4	8 0	8 8	9 4	10 0
9	4 4	5 3	6 0	6 9	7 6	8 3	9 0	9 9	10 6	11 3
10	5 0	5 10	6 8	7 6	8 4	9 2	10 0	10 10	11 8	12 6
11	5 6	6 5	7 4	8 3	9 2	10 1	11 0	11 11	12 10	13 9
12	6 0	7 0	8 0	9 0	10 0	11 0	12 0	13 0	14 0	15 0
13	6 6	7 7	8 8	9 9	10 10	11 11	12 12	13 13	14 14	15 15
14	7 0	8 2	9 4	10 6	11 8	12 10	13 12	14 14	15 16	16 18
15	7 6	8 9	10 0	11 3	12 6	13 9	15 0	16 3	17 6	18 9
16	8 0	9 4	10 8	12 0	13 4	14 8	16 0	17 4	18 8	20 0
17	8 6	9 11	11 4	12 9	14 2	15 7	17 0	18 5	19 10	21 3
18	9 0	10 6	12 0	13 6	15 0	16 6	18 0	19 6	21 0	22 6
19	9 6	11 1	12 8	14 3	15 10	17 5	19 0	20 7	22 2	23 9
20	10 0	11 8	13 4	15 0	16 8	18 4	20 0	21 8	23 4	25 0
21	10 6	12 3	14 0	15 10	17 6	19 3	21 0	22 9	24 6	26 3
22	11 0	12 10	14 8	16 6	18 4	20 2	22 0	23 10	25 8	27 6
23	11 6	13 5	15 4	17 11	19 2	21 1	23 0	24 11	26 10	28 9
24	12 0	14 0	16 0	18 0	20 0	22 0	24 0	26 0	28 0	30 0
25	12 6	14 7	16 8	18 9	20 10	22 11	25 0	27 1	29 2	31 3
26	13 0	15 2	17 4	19 6	21 8	23 10	26 0	28 2	30 4	32 6
27	13 6	15 9	18 0	20 3	22 6	24 9	27 0	29 3	31 6	33 9
28	14 0	16 4	18 8	21 0	23 4	25 8	28 0	30 4	32 8	35 0
29	14 6	16 11	19 4	21 9	24 11	26 7	29 0	31 5	33 10	36 3
30	15 0	17 6	20 0	22 6	25 0	27 6	30 0	32 6	35 0	37 6
31	15 6	18 1	20 8	23 11	25 10	28 5	31 0	33 7	36 2	38 9
32	16 0	18 8	21 4	24 0	26 8	29 4	32 0	34 8	37 4	40 0
33	16 6	19 3	22 0	24 9	27 6	30 3	33 0	35 9	38 6	41 3
34	17 0	19 10	22 8	25 6	28 4	31 2	34 0	36 10	39 8	42 6
35	17 6	20 5	23 4	26 3	29 2	32 1	35 0	37 11	40 10	43 9
36	18 0	21 0	24 0	27 0	30 0	33 0	36 0	39 0	42 0	45 0

BOARD TABLE MEASUREMENT — CONTINUED.

Feet	16 in W	17 in W	18 in W	19 in W	20 in W	21 in W	22 in W	23 in W	24 in W	25 in W
	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.	ft. in.
8	10 8	11 4	12 0	12 8	13 4	14 0	14 8	15 4	16 0	16 8
9	12 0	12 9	13 6	14 3	15 0	15 9	16 6	17 3	18 0	18 9
10	13 4	14 2	15 0	15 10	16 8	17 6	18 4	19 2	20 0	20 10
11	14 8	15 7	16 6	17 5	18 4	19 3	20 2	21 1	22 0	22 11
12	16 0	17 0	18 0	19 0	20 0	21 0	22 0	23 0	24 0	25 0
13	17 4	18 5	19 6	20 7	21 8	22 9	23 10	24 11	26 0	27 1
14	18 8	19 10	21 0	22 2	23 4	24 6	25 8	26 10	28 0	29 2
15	20 0	21 3	22 6	23 11	25 0	26 3	27 6	28 9	30 0	31 3
16	21 4	22 8	24 0	25 4	26 8	28 0	29 4	30 8	32 0	33 4
17	22 8	24 1	25 6	26 11	28 4	29 9	31 2	32 7	34 0	35 5
18	24 0	25 6	27 0	28 6	30 0	31 6	33 0	34 6	36 0	37 6
19	25 4	26 11	28 6	30 1	31 8	33 3	34 10	36 5	38 0	39 7
20	26 8	28 4	30 0	31 8	33 4	35 0	36 8	38 4	40 0	41 8
21	28 0	29 9	31 6	33 3	35 0	36 9	38 6	40 3	42 0	43 9
22	29 4	31 2	33 0	34 10	36 8	38 6	40 4	42 2	44 0	45 10
23	30 8	32 7	34 6	36 5	38 4	40 3	42 2	44 1	46 0	47 11
24	32 0	34 0	36 0	38 0	40 0	42 0	44 0	46 0	48 0	50 0
25	33 4	35 5	37 6	39 7	41 8	43 9	45 10	47 11	50 0	52 1
26	34 8	36 10	39 0	41 2	43 4	45 6	47 8	49 10	52 0	54 2
27	36 0	38 3	40 6	42 9	45 0	47 3	49 6	51 9	54 0	56 3
28	37 4	39 8	42 0	44 4	46 8	49 0	51 4	53 8	56 0	58 4
29	38 8	41 1	43 6	45 11	48 4	50 8	53 2	55 7	58 0	60 5
30	40 0	42 6	45 0	47 6	50 0	52 6	55 0	57 6	60 0	62 6

LOGS REDUCED TO ONE INCH BOARD MEASURE.

If the log is longer than is contained in the table, take any two lengths.

The first column on the left gives the length of the Log in feet. The figures under D denote the diameters of the Logs in inches. Fractional parts of inches are not given.

The diameter of timber is usually taken 20 feet from the butt. All logs short of 20 feet, take the diameter at the top, or small end.

To find the number of feet of boards which a log will produce when sawed, take the length of feet in the first column on the left hand, and the diameter at the top of the page in inches

Suppose a log 12 feet long and 24 inches diameter. In the left hand column is the length, and opposite 12 and under 24 is 300, the number of feet of boards in a log of that length and diameter.

Log. Ft.	D. 12	D. 13	D. 14	D. 15	D. 16	D. 17	D. 18	D. 19	D. 20	D. 21	D. 22	D. 23	D. 24
10	54	66	76	93	104	170	137	154	179	194	210	237	256
11	59	72	83	102	114	131	151	169	196	213	231	261	270
12	64	78	90	111	124	143	164	184	214	232	252	285	300
13	69	84	97	120	134	154	177	199	231	251	273	308	327
14	74	90	104	129	144	166	191	214	249	270	293	332	350
15	79	96	111	138	154	177	204	229	266	289	314	355	376
16	84	102	116	146	164	189	217	244	284	308	335	379	401
17	89	108	126	155	173	200	231	259	301	327	356	402	426
18	94	114	133	164	183	212	244	274	319	346	377	426	451
19	99	121	140	173	193	223	257	289	336	365	398	449	477
20	104	127	147	182	203	236	271	304	354	384	419	473	501
21	109	133	154	191	213	247	284	319	371	403	440	497	527
22	114	139	161	200	223	259	297	334	389	422	461	520	552
23	119	145	168	209	233	270	311	349	407	441	481	542	568
24	124	151	176	218	243	282	324	364	424	460	502	568	613
25	129	157	183	227	253	293	337	379	442	479	523	591	628
26	134	163	190	236	263	305	350	394	459	498	544	615	653
27	139	169	197	245	273	316	363	409	477	517	565	639	678
28	144	175	204	254	283	328	376	424	494	536	586	663	703
29	149	181	211	263	293	339	389	439	512	555	607	687	728
30	154	187	218	272	303	351	402	454	529	574	625	711	753
31	159	193	225	281	313	362	415	469	547	593	649	735	778

Log. Ft.	D. 25	D. 26	D. 27	D. 28	D. 29	D. 30	D. 31	D. 32	D. 33	D. 34	D. 35	D. 36
10	283	309	339	359	377	407	440	456	486	496	543	573
11	311	340	374	396	415	447	484	502	535	546	598	630
12	340	371	408	432	453	489	528	548	584	596	653	688
13	369	404	442	469	491	530	572	594	633	646	708	746
14	397	435	476	505	529	571	618	640	682	696	762	803
15	426	465	511	541	567	612	662	680	731	746	817	861
16	455	496	545	578	605	653	706	732	780	796	872	919
17	483	527	579	614	643	694	751	778	829	846	927	976
18	512	558	613	650	681	735	795	824	878	896	981	1034
19	541	590	647	688	719	776	830	870	927	946	1036	1092
20	569	621	681	724	757	817	884	916	976	996	1091	1148
21	598	652	716	760	796	859	928	962	1025	1046	1146	1206
22	627	684	750	796	834	900	972	1008	1074	1096	1200	1264
23	655	715	784	833	872	941	1017	1054	1123	1146	1255	1318
24	684	746	818	869	910	982	1061	1100	1172	1196	1310	1376
25	713	777	853	906	948	1023	1105	1146	1221	1246	1365	1434
26	742	808	887	942	986	1064	1149	1192	1270	1296	1420	1492
27	771	839	921	979	1024	1105	1193	1238	1319	1346	1475	1550
28	800	870	955	1015	1062	1146	1237	1284	1368	1396	1530	1608
29	829	901	989	1052	1100	1187	1281	1330	1417	1446	1585	1666
30	858	932	1023	1088	1138	1228	1325	1376	1466	1496	1640	1724
31	887	963	1057	1125	1176	1269	1369	1422	1515	1546	1695	1782

SOLID CONTENTS OF EQUAL SIDED TIMBER.

If the Log is shorter than is contained in the Table, take half or quarter of some length, if longer double some length.—The length of the Log is given on the top of the columns, the diameter in the left hand column. To obtain the Cubical Contents of Masts, Spars, Round Logs, &c., subtract one-fourth from the Contents.

D.	L. 9	L. 10	L. 11	L. 12	L. 13	L. 14	L. 15	L. 16	L. 17	L. 18	L. 19	L. 20
6	2 3	2 6	2 9	3 0	3 3	3 6	3 9	4 0	4 3	4 6	4 9	5 0
7	3 0	3 4	3 7	4 1	4 5	4 9	5 1	5 5	5 9	6 2	6 6	6 10
8	4 1	4 4	4 10	5 4	5 9	6 2	6 7	8 0	8 5	8 10	9 3	9 8
9	5 2	5 9	6 2	6 9	7 4	7 11	8 6	9 1	9 8	10 3	10 10	11 5
10	6 2	6 10	7 8	8 4	9 0	9 8	10 4	11 0	11 8	12 4	13 0	13 8
11	7 6	8 4	9 3	10 1	10 11	11 9	12 7	13 5	14 3	15 1	15 11	16 9
12	9 0	10 11	0 12	0 13	0 14	0 15	0 16	0 17	0 18	0 19	0 20	0 21
13	10 4	11 7	12 10	14 1	15 3	16 5	17 9	18 9	19 11	21 1	22 3	23 5
14	12 2	13 7	14 11	16 4	17 8	18 11	20 3	21 7	22 11	24 3	25 7	26 11
15	14 2	15 9	17 2	18 9	20 4	21 10	23 5	25 0	26 7	28 2	29 9	31 4
16	16 0	17 10	19 6	21 4	23 1	24 10	26 7	28 4	30 1	31 10	33 7	35 4
17	18 0	20 2	22 0	24 1	26 1	28 1	30 1	32 1	34 1	36 1	38 1	40 1
18	20 3	22 6	24 9	27 0	29 3	31 6	33 9	36 0	38 3	40 6	42 9	45 0
19	22 6	25 0	27 3	30 1	32 7	35 1	37 7	41 1	43 7	46 1	48 7	52 0
20	25 0	27 10	30 10	33 4	36 1	38 10	41 7	44 4	47 2	50 0	52 9	55 9
21	27 3	30 8	33 9	36 9	39 10	42 11	46 0	49 1	52 2	55 3	58 4	61 5
22	30 2	33 6	36 10	40 4	43 8	47 0	50 4	53 8	57 0	60 4	63 8	67 0
23	33 0	36 8	40 4	44 1	47 9	51 5	55 1	58 9	62 5	66 1	69 9	73 5
24	36 0	40 4	44 8	48 8	52 8	56 8	60 0	64 0	68 0	72 0	76 0	80 0
25	39 0	43 8	48 1	52 1	56 6	60 6	65 1	69 5	73 9	78 1	82 5	86 9
26	42 2	46 11	51 7	56 4	61 0	65 8	70 4	75 0	79 8	84 4	89 0	93 8
27	45 7	50 5	55 9	60 9	65 10	70 11	76 0	81 1	86 2	91 7	96 3	101 11
28	49 0	54 5	59 10	65 4	70 9	76 2	81 7	85 0	92 5	97 10	103 3	108 8
29	52 6	58 4	64 2	70 1	75 11	81 9	87 7	93 5	99 3	106 1	112 11	117 9
30	55 0	62 0	68 3	75 0	81 3	87 6	93 9	100 0	106 3	112 6	118 9	125 0

WEIGHT OF HARD COAL PROPORTIONED IN STOWAGE.

DESIGNATION.	Specific Gravity.*	Weight in pounds of cubic foot as sent to market.*	Cubic feet of space required to stow one ton of 2240 pounds.*	Cubic feet of space required to stow one ton of 2000 pounds.	Fixed Carbon in 100 parts.
Beaver Meadow,	1.610	54.925	40.790	36.41	88.942
Forest Improvement,	1.477	53.658	41.740	37.27	90.751
Peach Mountain,	1.464	53.794	41.640	37.20	89.020
Lehigh,	1.590	55.316	40.500	36 15	89.153
Lackawana,	1.421	48.886	45.820	40.91	87.741

* Walter Johnson's Report to the Navy Department of the U. States.

To obtain the Cubic feet of a COAL BIN, take the dimensions by measuring the inside—reduce the feet to inches, and multiply the length, breadth and depth together, and the product multiplied by .00058 gives the number of cubic feet.

VALUE OF WOOD AND BARK PER FEET AND CORD.

The price per Cord is found at the top of the column. The Solid Feet are in the left hand column, (under Ft.) opposite which are the prices per foot. 128 cubic feet, or a Cord, or pile, 8 feet long 4 feet wide and 4 feet high, is a cord of wood as established by law in most of the States. If the price of more than one cord is required, the amounts can be readily added or multiplied.

	Ft.	2.00	2.25	2.50	3.00	3.25	3.50	4.00	4.25	4.50	5.00	5.25	5.50	6.00	6.25	6.50	7.00	7.25	7.50	8.00	8.50	9.00	9.50	10.00
	1	2	2	2	2	3	3	3	3	4	4	4	4	5	5	5	5	6	6	6	6	7	7	7
	2	3	4	4	5	5	5	6	7	7	8	8	9	9	10	10	11	11	12	13	13	14	14	16
	3	5	5	6	7	8	8	9	10	11	12	13	13	14	15	15	16	17	18	19	20	21	22	23
	4	6	7	8	9	10	11	13	14	16	17	18	20	21	23	24	25	27	28	29	31	33	35	37
	5	8	9	10	12	13	14	16	17	19	20	21	23	25	26	28	30	33	34	35	38	40	42	45
	6	9	11	12	14	15	16	19	20	21	23	25	27	29	30	33	34	36	40	41	44	46	49	52
	7	11	12	14	16	18	19	22	23	25	27	29	31	33	34	38	39	41	44	45	47	50	53	55
	8	13	14	16	19	20	22	25	27	29	31	33	34	38	39	41	44	45	47	50	53	56	59	63
	9	14	16	18	21	23	25	28	30	32	35	37	39	42	44	46	49	51	53	56	60	63	67	70
	10	16	17	20	24	27	31	33	35	39	41	43	47	49	51	55	57	59	63	66	70	74	78	82
1 Foot.	16	25	28	31	38	41	44	50	53	56	63	66	69	75	78	81	88	91	94	100	106	113	119	125
	20	31	35	39	47	51	55	63	67	70	78	82	86	94	98	102	109	113	117	125	133	141	148	156
	30	47	53	59	70	76	82	94	100	105	117	123	129	141	146	152	164	170	176	188	199	211	223	
2 Feet.	32	50	56	63	75	81	88	100	106	113	125	131	139	150	156	163	175	181	188	200	213	225	238	250
	40	64	70	78	94	102	108	125	133	141	156	164	172	188	195	203	219	227	234	250	266	281	295	
3 Feet.	48	75	84	94	113	122	131	150	160	169	188	197	206	225	235	244	263	272	281	300	319	338	356	
	50	78	88	98	118	127	138	156	166	176	195	205	215	234	244	254	273	283	293	313	332	352	371	
	60	94	105	117	140	152	164	183	199	212	234	246	256	281	293	305	328	338	352	375	398	422	445	
4 Feet.	64	100	113	125	150	163	175	200	213	225	250	263	275	300	313	325	350	363	375	400	425	450	475	
	70	109	123	137	164	178	191	219	232	246	273	287	301	328	342	355	383	396	410	438	465	493	519	
5 Feet.	80	125	141	156	188	203	219	250	266	281	313	328	344	375	391	406	438	453	469	500	531	563	594	
	90	141	158	176	212	230	246	281	299	316	351	368	387	422	439	457	492	510	527	563	598	633	667	
6 Feet.	96	150	169	188	225	244	263	300	319	338	375	394	413	450	469	488	525	544	563	600	636	675	713	
	100	156	176	195	236	254	273	313	332	352	391	410	430	469	488	508	547	566	586	625	664	703	741	
7 Feet.	112	175	197	219	263	284	306	350	372	394	438	459	481	525	547	569	613	634	656	700	744	787	831	
8 Feet.	128	200	225	250	300	325	350	400	425	450	500	525	550	600	625	650	700	725	750	800	850	900	950	
	132	208	232	256	304	329	354	404	429	454	504	529	554	604	629	654	704	729	754	804	854	904	954	

WEIGHT OF ONE FOOT OF FLAT BAR IRON,

If a Bar of Iron be thicker than contained in the table add together the weight of two numbers, or treble the weight of one number. Wanted the weight of 1 foot of Bar Iron, 4 inches broad and 2 1-4 inches thick. Opposite 4 and under 1 is 13.364, which doubled is 26.728, add the weight of 1-4th, (3.841,) equal 30.569 lbs

Breadth in inches.	THICKNESS IN PARTS OF AN INCH.							
	$\frac{1}{4}$	$\frac{5}{16}$	$\frac{3}{8}$	$\frac{7}{16}$	$\frac{1}{2}$	$\frac{5}{8}$	$\frac{3}{4}$	1 in.
1	.835	1.044	1.253	1.461	1.670	2.088	2.506	3.340
1 1/8	.939	1.174	1.409	1.644	1.878	2.348	2.818	3.756
1 1/4	1.044	1.305	1.566	1.826	2.088	2.609	3.132	4.176
1 1/2	1.148	1.435	1.722	2.009	2.296	2.870	3.444	4.592
1 3/4	1.252	1.566	1.879	2.192	2.504	3.131	3.758	5.008
2	1.358	1.696	2.035	2.374	2.716	3.392	4.070	5.432
2 1/8	1.462	1.827	2.192	2.557	2.924	3.653	4.384	5.848
2 1/4	1.566	1.957	2.348	2.740	3.132	3.914	4.696	6.264
2 1/2	1.671	2.088	2.505	2.922	3.342	4.175	5.010	6.684
2 3/4	1.775	2.218	2.662	3.105	3.550	4.435	5.324	7.100
3	1.880	2.348	2.818	3.288	3.760	4.696	5.636	7.520
3 1/8	1.984	2.479	2.975	3.470	3.968	4.957	5.950	7.936
3 1/4	2.088	2.609	3.131	3.653	4.176	5.218	6.262	8.352
3 1/2	2.193	2.740	3.288	3.836	4.386	5.479	6.576	8.772
3 3/4	2.297	2.870	3.444	4.018	4.594	5.740	6.888	9.188
4	2.402	3.001	3.601	4.201	4.804	6.001	7.202	9.608
4 1/8	2.506	3.131	3.758	4.384	5.012	6.262	7.516	10.024
4 1/4	2.715	3.392	4.071	4.749	5.430	6.784	8.142	10.860
4 1/2	2.923	3.653	4.384	5.114	5.846	7.306	8.768	11.692
4 3/4	3.132	3.914	4.697	5.479	6.264	7.828	9.394	12.528
5	3.341	4.175	5.010	5.845	6.682	8.350	10.020	13.364
5 1/8	3.549	4.436	5.323	6.210	7.098	8.871	10.646	14.196
5 1/4	3.758	4.697	5.636	6.575	7.516	9.393	11.272	15.032
5 1/2	3.966	4.958	5.949	6.941	7.932	9.915	11.898	15.864
5 3/4	4.175	5.219	6.263	7.306	8.350	10.437	12.526	16.700
6	4.384	5.479	6.576	7.671	8.768	10.958	13.152	17.536
6 1/8	4.593	5.741	6.889	8.037	9.186	11.480	13.778	18.372
6 1/4	4.801	6.001	7.202	8.402	9.602	12.002	14.404	19.204
6 1/2	5.010	6.262	7.515	8.767	10.020	12.524	15.030	20.042

WEIGHT OF ONE SQUARE FOOT OF SHEET IRON, &c.

Names.	Thickness by the Birmingham (Eng.) Wire Gauge.														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Iron	12.50	12.00	11.00	10.00	8.74	8.12	7.50	6.86	6.24	5.62	5.00	4.38	3.75	3.12	2.82
Cop.	14.50	13.90	12.75	11.60	10.10	9.40	8.70	7.90	7.20	6.50	5.80	5.08	4.34	3.60	3.27
Brass	13.75	13.20	12.10	11.00	9.61	8.93	8.25	7.54	6.86	6.18	5.50	4.81	4.12	3.43	3.10
	Thickness by the Wire Gauge.														
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Iron	2.50	2.18	1.86	1.70	1.54	1.40	1.25	1.12	1.00	.90	.80	.72	.64	.56	.50
Cop.	2.90	2.52	2.15	1.97	1.78	1.62	1.45	1.30	1.16	1.04	.92	.83	.74	.64	.58
Brass	2.75	2.40	2.04	1.87	1.69	1.54	1.37	1.23	1.10	.99	.88	.79	.70	.61	.55

No. 1 Wire Gauge is 5-16ths of an inch; No. 4 is 1-4th; No. 11 is 1-8th; No. 13 is 1-12th; No. 15 is 1-14th; No. 16 is 1-16th; No. 17 is 1-18th; No. 19 is 1-23; No. 22 is 1-32.

RUSSIA SHEET IRON

Measures 56 by 28 Inches, and is rated by the weight per sheet. The numbers run from 8 to 18 Russian lbs. per sheet. 8 Russian pounds equal 7.2 English pounds; 9 = 8.1 lbs.; 10 = 9 lbs.; 11 = 10 lbs.; 12 = 11.2 lbs. &c. — 100 Russian lbs. equal 90 lbs. English.

WEIGHT OF ONE SQUARE FOOT OF PLATE IRON, &c.

Thickness in parts of an inch.	Iron.	Copper.	Brass.	Lead.	Thickness in parts of an inch.	Iron.	Copper.	Brass.	Lead.
$\frac{1}{16}$	2.5	2.9	2.7	3.7	$\frac{7}{16}$	17.5	20.3	19.0	25.9
$\frac{1}{8}$	5.0	5.8	5.5	7.4	$\frac{1}{2}$	20.0	23.2	21.8	29.6
$\frac{3}{16}$	7.5	8.7	8.2	11.1	$\frac{5}{8}$	25.0	28.9	27.1	37.0
$\frac{1}{4}$	10.0	11.6	10.9	14.8	$\frac{3}{4}$	30.0	34.7	32.5	44.4
$\frac{5}{16}$	12.5	14.5	13.6	18.5	$\frac{7}{8}$	35.0	40.4	37.9	57.8
$\frac{3}{8}$	15.0	17.4	16.3	22.2	1	40.0	46.2	43.3	59.2

WEIGHT ONE FOOT IN LENGTH OF SQUARE AND ROUND BAR IRON.

Side and diam- eter in inches.	Square Iron in lbs.	Round Iron in lbs.	Side and diam- eter in inches.	Square Iron in lbs.	Round Iron in lbs.	Side and diam- eter in inches.	Square Iron in lbs.	Round Iron in lbs.
$\frac{1}{4}$	.209	.164	$\frac{1}{5}$	8.820	6.928	$3\frac{3}{4}$	46.969	36.895
$\frac{3}{16}$	.326	.256	$1\frac{1}{8}$	10.229	8.043	$3\frac{7}{8}$	50.153	39.390
$\frac{1}{2}$	.470	.369	$1\frac{1}{4}$	11.743	9.224	4	53.440	41.984
$\frac{5}{16}$	.640	.503	2	13.360	10.496	$4\frac{1}{8}$	56.833	44.637
$\frac{3}{8}$	.835	.656	$2\frac{1}{8}$	15.083	11.846	$4\frac{1}{4}$	60.329	47.385
$\frac{7}{16}$	1.057	.831	$2\frac{1}{4}$	16.909	13.283	$4\frac{3}{8}$	63.930	50.211
$\frac{1}{2}$	1.305	1.025	$2\frac{3}{8}$	18.840	14.797	$4\frac{1}{2}$	67.637	53.132
$\frac{5}{8}$	1.579	1.241	$2\frac{1}{2}$	20.875	16.396	$4\frac{5}{8}$	71.445	56.113
$\frac{3}{4}$	1.879	1.476	$2\frac{5}{8}$	23.115	18.146	$4\frac{3}{4}$	75.359	59.187
$\frac{7}{8}$	2.205	1.732	$2\frac{3}{4}$	25.259	19.842	$4\frac{7}{8}$	79.378	62.344
1	2.558	2.011	$2\frac{7}{8}$	27.608	21.684	5	83.510	65.585
$1\frac{1}{16}$	2.936	2.306	3	30.070	23.653	$5\frac{1}{4}$	92.459	72.618
$1\frac{1}{8}$	3.340	2.624	$3\frac{1}{8}$	32.618	25.620	$5\frac{1}{2}$	101.036	79.370
$1\frac{1}{4}$	4.228	3.321	$3\frac{1}{4}$	35.279	27.709	$5\frac{3}{4}$	110.429	86.731
$1\frac{3}{8}$	5.219	4.099	$3\frac{3}{8}$	38.045	29.881	6	120.243	94.610
$1\frac{1}{2}$	6.315	4.961	$3\frac{1}{2}$	40.916	32.170	The weight of Bar Iron being 13 " " " Cast Iron = .95 " " " Steel, 1.00 " " " Copper, 1.10		
$1\frac{5}{8}$	7.516	5.913	$3\frac{5}{8}$	43.890	34.472			

DIMENSIONS OF CYLINDRICAL COLUMNS OF CAST IRON TO SUSTAIN A PRESSURE WITH SAFETY.

Diameter in inches.	LENGTH OR HEIGHT IN FEET.										
	4	6	8	10	12	14	16	18	20	22	24
	WEIGHT OR LOAD IN CWTs.										
2	72	60	49	40	32	26	22	18	15	13	11
2½	119	105	91	77	65	55	47	40	34	29	25
3	178	163	145	128	111	97	84	73	64	56	49
3½	247	232	214	191	172	156	135	119	106	94	81
4	326	310	288	266	242	220	198	178	160	144	130
4½	418	400	379	354	327	301	275	251	229	208	189
5	522	501	479	452	427	394	365	337	310	285	262
6	607	592	573	550	525	497	469	440	413	386	360
7	1032	1013	989	959	924	887	848	808	765	725	686
8	1333	1315	1289	1259	1224	1185	1142	1097	1052	1005	959
9	1716	1697	1672	1640	1603	1561	1515	1467	1416	1364	1311
10	2119	2100	2077	2045	2007	1964	1916	1865	1811	1755	1697
11	2570	2550	2520	2490	2450	2410	2358	2305	2248	2189	2127
12	3050	3040	3020	2970	2930	2900	2830	2780	2730	2670	2600

Practical utility of the Table.

Note. — Wanting to support the front of a building with cast iron columns 18 feet in length, 8 inches in diameter, and the metal 1 inch in thickness; what weight may I confidently expect each column capable of supporting without tendency to deflection?

Opposite 8 inches diameter and under 18 feet = 1097

* Also opposite 6 in. diameter and under 18 feet = 440

= 657 cwt.

* This deduction is on account of the core.

MOLDER'S TABLE.

Bar Iron being 1, Cast Iron equal .95	Cast Iron being 1, Bar Iron equal 1.07	Yellow Pine being 1, Cast Iron equal 12.
Steel " 1.02	Steel " 1.08	Brass " 12.7
Copper " 1.16	Brass " 1.16	Copper " 13.3
Brass " 1.09	Copper " 1.21	Lead " 18.1
Lead " 1.48	Lead " 1.56	Zinc " 11.5

1. Suppose I have an article of plate iron, the weight of which is 728 lbs., but want the same of copper, and of similar dimensions, what will be its weight?

$$728 \times 1.16 = 844.48 \text{ lbs.}$$

2. A model of Dry Pine weighing 3 lbs., and in which the iron for its construction forms no material portion of the weight, what may I anticipate its weight to be in cast iron.

$$3 \times 12 = 36 \text{ pounds.}$$

It frequently occurs, in the construction of models, that neither the quality or condition of the wood can be properly estimated; and in such cases, it may be a near enough approximation to reckon 13 lbs. of cast iron to each pound of model.

HEXAGONAL NUTS FOR WROUGHT IRON BOLTS.

Diameter of bolts,	$\frac{3}{8}$	$\frac{1}{2}$	$\frac{5}{8}$	$\frac{3}{4}$	$\frac{7}{8}$	1	$1\frac{1}{8}$	$1\frac{1}{4}$	$1\frac{3}{8}$	$1\frac{1}{2}$	$1\frac{5}{8}$	$1\frac{3}{4}$
Breadth of nuts,	$\frac{5}{4}$	$\frac{7}{8}$	$1\frac{1}{8}$	$1\frac{5}{16}$	$1\frac{1}{2}$	$1\frac{3}{4}$	$1\frac{15}{16}$	$2\frac{3}{16}$	$2\frac{5}{8}$	$2\frac{9}{16}$	$2\frac{3}{4}$	3

CAPACITY OF CISTERNS AND RESERVOIRS IN GALLONS.

Depth, 10 Inches : — Diameter from 2 to 25 Feet.

2	feet	19.5	5	feet	122.40	8	feet	313.33	12	feet	705.
$2\frac{1}{2}$	"	30.6	$5\frac{1}{2}$	"	148.10	$8\frac{1}{2}$	"	353.72	13	"	827.4
3	"	44.06	6	"	176.25	9	"	396.56	14	"	959.6
$3\frac{1}{2}$	"	59.97	$6\frac{1}{2}$	"	206.85	$9\frac{1}{2}$	"	461.40	15	"	1101.6
4	"	78.33	7	"	239.88	10	"	489.20	20	"	1958.4
$4\frac{1}{2}$	"	99.14	$7\frac{1}{2}$	"	275.40	11	"	592.40	25	"	3059.9

NUMBER OF THREADS IN V-THREAD SCREWS.

Diam. in inches, . . .	$\frac{1}{4}$	$\frac{5}{16}$	$\frac{3}{8}$	$\frac{7}{16}$	$\frac{1}{2}$	$\frac{5}{8}$	$\frac{3}{4}$	$\frac{7}{8}$	1	$1\frac{1}{8}$	$1\frac{1}{4}$	$1\frac{3}{8}$
No. of threads, . . .	20	18	16	14	12	11	10	9	8	7	7	6
Diam. in inches, . . .	$1\frac{1}{2}$	$1\frac{3}{8}$	$1\frac{1}{2}$	$1\frac{7}{8}$	2	$2\frac{1}{4}$	$2\frac{1}{2}$	$2\frac{3}{4}$	3	$3\frac{1}{4}$	$3\frac{1}{2}$	$3\frac{3}{4}$
No. of threads, . . .	6	5	5	$4\frac{1}{2}$	$4\frac{1}{2}$	4	4	$3\frac{1}{2}$	$3\frac{1}{2}$	$3\frac{1}{4}$	$3\frac{1}{4}$	$3\frac{1}{4}$
Diam. in inches, . . .	$3\frac{3}{4}$	4	$4\frac{1}{4}$	$4\frac{1}{2}$	$4\frac{3}{4}$	5	$5\frac{1}{4}$	$5\frac{1}{2}$	$5\frac{3}{4}$	$5\frac{3}{4}$	6	6
No. of threads, . . .	3	3	$2\frac{7}{8}$	$2\frac{7}{8}$	$2\frac{3}{4}$	$2\frac{3}{4}$	$2\frac{3}{4}$	$2\frac{3}{8}$	$2\frac{3}{8}$	$2\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$

The depth of the threads should be half their pitch. The diameter of a screw, to work in the teeth of a wheel, should be such, that the angle of the threads does not exceed 10° .

WEIGHT OF LEAD PIPE PER FOOT

Diameter.			lbs. oz.		Diameter.			lbs. oz.	
$\frac{1}{4}$	inch	medium	1	—	$1\frac{1}{2}$	inch	extra light	3	—
"	"	strong	1	5	"	"	light	4	5
$\frac{1}{2}$	"	light	1	—	"	"	medium	5	3
"	"	medium	1	5	"	"	strong	6	5
"	"	strong	1	10	$1\frac{3}{4}$	"	medium	5	5
"	"	extra strong	2	2	"	"	strong	6	11
$\frac{3}{8}$	"	light	1	10	2	"	light	5	9
"	"	medium	2	3	"	"	medium	6	11
"	"	strong	2	8	"	"	strong	7	11
"	"	extra strong	2	12	$2\frac{1}{2}$	"	light	8	5
$\frac{3}{4}$	"	light	1	11	"	"	medium	10	—
"	"	light	2	1	"	"	strong	11	11
"	"	medium	2	11	3	"	light	10	—
"	"	strong	3	4	"	"	medium	11	10
"	"	extra strong	3	8	"	"	strong	14	11
1	"	light	2	5	$3\frac{1}{2}$	"	medium	15	—
"	"	light	2	12	"	"	strong	18	—
"	"	medium	3	7	"	"	extra strong	23	5
"	"	strong	4	1	4	"	waste light	5	5
$1\frac{1}{2}$	"	extra light	2	12	"	"	medium	7	—
"	"	light	3	4	"	"	strong	8	11
"	"	medium	3	11	$4\frac{1}{2}$	"	light	5	12
"	"	strong	4	3	"	"	medium	8	—
"	"	extra strong	4	14	"	"	strong	9	11

WEIGHT OF ONE FOOT OF CAST IRON PIPES.

Diam. of bore.	$\frac{1}{4}$ in. thick.	$\frac{3}{8}$ in. thick.	$\frac{1}{2}$ in. thick.	$\frac{5}{8}$ in. thick.	$\frac{3}{4}$ in. thick.	$\frac{7}{8}$ in. thick.	1 in. thick.
Inch.	lb.	lb.	lb.	lb.	lb.	lb.	lb.
1	3.06	5.06					
1 $\frac{1}{4}$	3.68	5.98					
1 $\frac{1}{2}$	4.29	6.9	9.82				
1 $\frac{3}{4}$	4.91	7.83	11.05				
2	5.53	8.75	12.27	16.11			
2 $\frac{1}{4}$	6.14	9.66	13.5	17.64			
2 $\frac{1}{2}$	6.74	10.58	14.72	19.17	23.92		
2 $\frac{3}{4}$	7.36	11.5	15.95	20.7	25.71		
3	7.98	12.43	17.18	22.19	27.62	33.29	39.28
3 $\frac{1}{4}$	8.59	13.34	18.35	23.78	29.45	35.44	41.72
3 $\frac{1}{2}$	9.2	14.21	19.64	25.31	31.3	37.58	44.18
3 $\frac{3}{4}$	9.76	15.19	20.86	26.85	33.13	39.73	46.63
4	10.44	16.11	22.1	28.38	34.98	41.88	49.1
4 $\frac{1}{4}$	11.1	17.08	23.37	29.97	36.57	44.08	51.6
4 $\frac{1}{2}$	11.66	17.94	24.54	31.44	38.65	46.17	54.
4 $\frac{3}{4}$	12.27	18.87	25.77	32.98	40.5	48.32	56.45
5	12.80	19.78	26.99	34.51	42.33	50.46	59.
5 $\frac{1}{4}$	13.5	20.71	28.23	36.05	44.18	52.62	61.36
5 $\frac{1}{2}$	14.11	21.63	29.45	37.58	46.02	54.76	63.81
5 $\frac{3}{4}$	14.73	22.55	30.68	39.12	47.86	56.91	66.27
6	15.34	23.47	31.91	40.65	49.7	59.06	68.73
6 $\frac{1}{2}$		25.31	34.36	43.72	53.39	63.36	73.41
7		27.15	36.82	46.79	56.84	67.65	78.53
7 $\frac{1}{2}$		29.	39.05	49.86	60.74	71.95	83.45
8		30.83	41.71	52.92	64.42	76.23	88.35
8 $\frac{1}{2}$		32.9	44.4	56.21	68.33	80.76	93.49
9		34.52	46.64	59.07	71.8	84.84	98.18
9 $\frac{1}{2}$		36.36	49.09	62.13	75.47	89.13	103.1
10		38.2	51.54	65.2	79.16	93.42	108.
10 $\frac{1}{2}$		40.04	54.	68.26	82.84	97.71	113.
11		41.88	56.46	71.33	86.52	102.01	117.81
11 $\frac{1}{2}$		43.71	58.9	74.39	90.19	106.3	122.71
12		45.55	61.35	77.46	93.6	110.6	127.6

bore.	$\frac{1}{2}$ in.	$\frac{3}{4}$ in.	$\frac{1}{2}$ in.	1 in.	1 $\frac{1}{2}$ in.	1 $\frac{1}{4}$ in.	1 $\frac{1}{2}$ in.	1 $\frac{3}{4}$ in.	2 in.
Inch.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.
12 $\frac{1}{2}$	63.5	97.3	114	132.	149	167	205	243	285
13	66.	101.	118	137.	154	173.5	212	252	294
13 $\frac{1}{2}$	68.4	104.8	122	141.5	160	179	219	260	304
14	71.	108.2	126	146.	165	185	227	269	314
14 $\frac{1}{2}$	73.4	112.3	130	151.	170	192	234	277	324
15	75.8	115.7	135	156.	176	198	242	286	334
15 $\frac{1}{2}$	78.1	119.	139	161.	181	204	250	295	344
16	80.7	123.	143	166.	187	211	257	303	355
16 $\frac{1}{2}$	83.1	126.5	147	170.1	192	217	264	312	363
17	85.5	130.	152	178.5	198	223	271	322	376
18	90.5	137.	161	185.	209	235	285	338	393
19	95.5	144.8	169	195.	222	247	300	354	412
20	100.	152.	178	205.	233	259	315	372	432

WAGES TABLE, BY THE DAY AND MONTH.

1910

MECHANICS' AND LABORERS' WAGES TABLE BY THE DAY AND MONTH — FROM 55c. TO \$1.75 PER DAY.

Days	55c.	.60	.65	.70	.75	.80	.85	.90	.95	1.00	1.05	1.10	1.15	1.20	1.25	1.30	1.35	1.40	1.45	1.50	1.55	1.60	1.65	1.70	1.75
1	.55	.60	.65	.70	.75	.80	.85	.90	.95	1.00	1.05	1.10	1.15	1.20	1.25	1.30	1.35	1.40	1.45	1.50	1.55	1.60	1.65	1.70	1.75
2	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10	3.20	3.30	3.40	3.50
3	1.65	1.80	1.95	2.10	2.25	2.40	2.55	2.70	2.85	3.00	3.15	3.30	3.45	3.60	3.75	3.90	4.05	4.20	4.35	4.50	4.65	4.80	4.95	5.10	5.25
4	2.20	2.40	2.60	2.80	3.00	3.20	3.40	3.60	3.80	4.00	4.20	4.40	4.60	4.80	5.00	5.20	5.40	5.60	5.80	6.00	6.20	6.40	6.60	6.80	7.00
5	2.75	3.00	3.25	3.50	3.75	4.00	4.25	4.50	4.75	5.00	5.25	5.50	5.75	6.00	6.25	6.50	6.75	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75
6	3.30	3.60	3.90	4.20	4.50	4.80	5.10	5.40	5.70	6.00	6.30	6.60	6.90	7.20	7.50	7.80	8.10	8.40	8.70	9.00	9.30	9.60	9.90	10.20	10.50
7	3.85	4.20	4.55	4.90	5.25	5.60	5.95	6.30	6.65	7.00	7.35	7.70	8.05	8.40	8.75	9.10	9.45	9.80	10.15	10.50	10.85	11.20	11.55	11.90	12.25
8	4.40	4.80	5.20	5.60	6.00	6.40	6.80	7.20	7.60	8.00	8.40	8.80	9.20	9.60	10.00	10.40	10.80	11.20	11.60	12.00	12.40	12.80	13.20	13.60	14.00
9	4.95	5.40	5.85	6.30	6.75	7.20	7.65	8.10	8.55	9.00	9.45	9.90	10.35	10.80	11.25	11.70	12.15	12.60	13.05	13.50	13.95	14.40	14.85	15.30	15.75
10	5.50	6.00	6.50	7.00	7.50	8.00	8.50	9.00	9.50	10.00	10.50	11.00	11.50	12.00	12.50	13.00	13.50	14.00	14.50	15.00	15.50	16.00	16.50	17.00	17.50
11	6.05	6.60	7.15	7.70	8.25	8.80	9.35	9.90	10.45	11.00	11.55	12.10	12.65	13.20	13.75	14.30	14.85	15.40	15.95	16.50	17.05	17.60	18.15	18.70	19.25
12	6.60	7.20	7.80	8.40	9.00	9.60	10.20	10.80	11.40	12.00	12.60	13.20	13.80	14.40	15.00	15.60	16.20	16.80	17.40	18.00	18.60	19.20	19.80	20.40	21.00
13	7.15	7.80	8.45	9.10	9.75	10.40	11.05	11.70	12.35	13.00	13.65	14.30	14.95	15.60	16.25	16.90	17.55	18.20	18.85	19.50	20.15	20.80	21.45	22.10	22.75
14	7.70	8.40	9.10	9.80	10.50	11.20	11.90	12.60	13.30	14.00	14.70	15.40	16.10	16.80	17.50	18.20	18.90	19.60	20.30	21.00	21.70	22.40	23.10	23.80	24.50
15	8.25	9.00	9.75	10.50	11.25	12.00	12.75	13.50	14.25	15.00	15.75	16.50	17.25	18.00	18.75	19.50	20.25	21.00	21.75	22.50	23.25	24.00	24.75	25.50	26.25
16	8.80	9.60	10.40	11.20	12.00	12.80	13.60	14.40	15.20	16.00	16.80	17.60	18.40	19.20	20.00	20.80	21.60	22.40	23.20	24.00	24.80	25.60	26.40	27.20	28.00
17	9.35	10.20	11.05	11.90	12.75	13.60	14.45	15.30	16.15	17.00	17.85	18.70	19.55	20.40	21.25	22.10	22.95	23.80	24.65	25.50	26.35	27.20	28.05	28.90	29.75
18	9.90	10.80	11.70	12.60	13.50	14.40	15.30	16.20	17.10	18.00	18.90	19.80	20.70	21.60	22.50	23.40	24.30	25.20	26.10	27.00	27.90	28.80	29.70	30.60	31.50
19	10.45	11.40	12.35	13.30	14.25	15.20	16.15	17.10	18.05	19.00	19.95	20.90	21.85	22.80	23.75	24.70	25.65	26.60	27.55	28.50	29.45	30.40	31.35	32.30	33.25
20	11.00	12.00	13.00	14.00	15.00	16.00	17.00	18.00	19.00	20.00	21.00	22.00	23.00	24.00	25.00	26.00	27.00	28.00	29.00	30.00	31.00	32.00	33.00	34.00	35.00
21	11.55	12.60	13.65	14.70	15.75	16.80	17.85	18.90	19.95	21.00	22.05	23.10	24.15	25.20	26.25	27.30	28.35	29.40	30.45	31.50	32.55	33.60	34.65	35.70	36.75
22	12.10	13.20	14.30	15.40	16.50	17.60	18.70	19.80	20.90	22.00	23.10	24.20	25.30	26.40	27.50	28.60	29.70	30.80	31.90	33.00	34.10	35.20	36.30	37.40	38.50
23	12.65	13.80	14.95	16.10	17.25	18.40	19.55	20.70	21.85	23.00	24.15	25.30	26.45	27.60	28.75	29.90	31.05	32.20	33.35	34.50	35.65	36.80	37.95	39.10	40.25
24	13.20	14.40	15.60	16.80	18.00	19.20	20.40	21.60	22.80	24.00	25.20	26.40	27.60	28.80	30.00	31.20	32.40	33.60	34.80	36.00	37.20	38.40	39.60	40.80	42.00
25	13.75	15.00	16.25	17.50	18.75	20.00	21.25	22.50	23.75	25.00	26.25	27.50	28.75	30.00	31.25	32.50	33.75	35.00	36.25	37.50	38.75	40.00	41.25	42.50	43.75
26	14.30	15.60	16.90	18.20	19.50	20.80	22.10	23.40	24.70	26.00	27.30	28.60	29.90	31.20	32.50	33.80	35.10	36.40	37.70	39.00	40.30	41.60	42.90	44.20	45.50
27	.14	.15	.16	.18	.19	.20	.21	.23	.24	.25	.26	.28	.29	.30	.31	.33	.34	.35	.36	.38	.39	.40	.41	.43	.44
28	.28	.30	.33	.35	.38	.40	.43	.45	.48	.50	.53	.55	.58	.60	.63	.65	.68	.70	.73	.75	.78	.80	.83	.85	.88
29	.41	.45	.49	.53	.56	.60	.64	.68	.71	.75	.79	.83	.86	.90	.94	.98	1.01	1.05	1.09	1.13	1.16	1.20	1.24	1.28	1.31

Note. — Any rate of labor can be readily computed by adding to the sum of \$1.75 any less amount. For instance: suppose \$2.50 per day is the sum required, add to the \$1.75 the amount at 75 cents per day

102 WAGES BY DAY AND WEEK FROM 50 CTS. TO \$3.25.

WAGES, PER WEEK, FROM 50 CENTS, TO \$3.25. FOR MANUFACTURERS & MECHANICS.

Days.	50 cts.	60 cts.	62½ ct.	70 cts.	75 cts.	80 cts.	77½ ct.	90 cts.	\$1.00	\$1.12½	\$1.25
1	.2	.2½	.2½	.3	.3	.3	.3	.3½	.4	.4½	.5
2	.4	.5	.5	.6	.6	.6	.7	.7½	.8	.9	.10
3	.6	.7½	.7	.8	.9	.9	.10	.11	.12	.14	.15
4	.8	.10	.10	.11	.12	.13	.14	.15	.16	.18	.20
5	.16	.20	.20	.23	.25	.26	.29	.30	.33	.37	.41
6	.25	.30	.31	.35	.37	.40	.43	.45	.50	.56	.62
7	.33	.40	.41	.46	.50	.53	.56	.60	.66	.75	.83
8	.41	.50	.52	.58	.62	.66	.73	.75	.83	.93	1.04
9	.50	.60	.62	.70	.75	.80	.87	.90	1.00	1.12	1.25
10	.59	.70	.73	.81	.87	.93	1.02	1.05	1.16	1.31	1.45
11	.66	.80	.83	.93	1.00	1.06	1.16	1.20	1.33	1.50	1.66
12	.75	.90	.93	1.05	1.12	1.20	1.31	1.35	1.50	1.68	1.87
13	.83	1.00	1.04	1.16	1.25	1.33	1.45	1.50	1.66	1.87	2.08
14	.91	1.10	1.14	1.28	1.37	1.46	1.60	1.65	1.83	2.06	2.29
15	1.00	1.20	1.25	1.40	1.50	1.60	1.75	1.80	2.00	2.25	2.50
16	1.08	1.30	1.35	1.61	1.62	1.73	1.89	1.95	2.16	2.43	2.70
17	1.16	1.40	1.45	1.63	1.75	1.86	2.04	2.10	2.33	2.62	2.91
18	1.25	1.50	1.56	1.75	1.87	2.00	2.18	2.25	2.50	2.81	3.12
19	1.33	1.60	1.66	1.96	2.00	2.13	2.33	2.40	2.66	3.00	3.33
20	1.41	1.70	1.77	1.98	2.12	2.26	2.48	2.55	2.83	3.19	3.54
21	1.50	1.80	1.87	2.10	2.25	2.40	2.62	2.70	3.00	3.37	3.75
22	1.56	1.90	1.97	2.21	2.37	2.53	2.77	2.85	3.16	3.56	3.95
23	1.66	2.00	2.08	2.33	2.50	2.66	2.91	3.00	3.33	3.75	4.16
24	1.75	2.10	2.18	2.45	2.62	2.80	3.06	3.15	3.50	3.93	4.37
25	1.83	2.20	2.29	2.56	2.75	2.93	3.20	3.30	3.66	4.12	4.58
26	1.91	2.30	2.39	2.68	2.87	3.06	3.35	3.45	3.83	4.31	4.79
27	2.00	2.40	2.50	2.80	3.00	3.20	3.50	3.60	4.00	4.50	5.00
28	2.08	2.50	2.60	2.91	3.12	3.33	3.64	3.75	4.16	4.65	5.20
29	2.16	2.60	2.70	3.03	3.25	3.46	3.79	3.90	4.33	4.87	5.42
30	2.25	2.70	2.81	3.15	3.37	3.60	3.93	4.05	4.50	5.06	5.62
31	2.33	2.80	2.91	3.26	3.50	3.73	4.08	4.20	4.66	5.25	5.83
Days.	\$1.37½	\$1.50	\$1.62½	\$1.75	\$1.87½	\$2.00	\$2.25	\$2.50	\$2.75	\$3.00	\$3.25
1	.5	.6	.6	.7	.7	.8	.9	.10	.11	.12	.13
2	.11	.12	.13	.14	.15	.16	.18	.20	.23	.25	.27
3	.17	.18	.20	.21	.23	.25	.28	.31	.34	.37	.40
4	.23	.25	.27	.29	.31	.33	.37	.41	.45	.50	.54
5	.46	.50	.54	.58	.62	.66	.75	.83	.91	1.00	1.08
6	.68	.75	.81	.87	.93	1.00	1.12	1.25	1.37	1.50	1.62
7	.91	1.00	1.08	1.16	1.25	1.33	1.50	1.66	1.83	2.00	2.16
8	1.14	1.25	1.35	1.45	1.56	1.66	1.87	2.08	2.29	2.50	2.70
9	1.37	1.50	1.62	1.75	1.87	2.00	2.25	2.50	2.75	3.00	3.25
10	1.60	1.75	1.89	2.04	2.18	2.33	2.62	2.91	3.20	3.50	3.79
11	1.83	2.00	2.16	2.33	2.50	2.66	3.00	3.33	3.66	4.00	4.33
12	2.06	2.25	2.43	2.62	2.81	3.00	3.37	3.75	4.12	4.50	4.87
13	2.29	2.50	2.70	2.91	3.12	3.33	3.75	4.16	4.58	5.00	5.41
14	2.52	2.75	2.98	3.20	3.43	3.66	4.12	4.58	5.04	5.50	5.95
15	2.75	3.00	3.25	3.50	3.75	4.00	4.50	5.00	5.50	6.00	6.50
16	2.98	3.25	3.52	3.79	4.06	4.33	4.87	5.41	5.95	6.50	7.04
17	3.21	3.50	3.79	4.08	4.37	4.66	5.25	5.83	6.41	7.00	7.58
18	3.43	3.75	4.06	4.37	4.68	5.00	5.62	6.25	6.87	7.50	8.12
19	3.66	4.00	4.33	4.66	5.00	5.33	6.00	6.66	7.33	8.00	8.66
20	3.89	4.25	4.60	4.95	5.31	5.66	6.37	7.08	7.79	8.50	9.20
21	4.12	4.50	4.87	5.25	5.62	6.00	6.75	7.50	8.25	9.00	9.75
22	4.35	4.75	5.14	5.54	5.93	6.33	7.12	7.91	8.70	9.50	10.29
23	4.58	5.00	5.41	5.83	6.25	6.66	7.50	8.33	9.16	10.00	10.83
24	4.81	5.25	5.68	6.12	6.56	7.00	7.87	8.75	9.62	10.50	11.37
25	5.04	5.50	5.95	6.41	6.87	7.33	8.25	9.16	10.08	11.00	11.91
26	5.27	5.75	6.22	6.70	7.18	7.66	8.62	9.58	10.54	11.50	12.45
27	5.50	6.00	6.50	7.00	7.50	8.00	9.00	10.00	11.00	12.00	13.00
28	5.73	6.25	6.77	7.29	7.81	8.33	9.37	10.41	11.45	12.50	13.54
29	5.96	6.50	7.04	7.58	8.12	8.66	9.75	10.83	11.91	13.00	14.08
30	6.18	6.75	7.31	7.87	8.43	9.00	10.12	11.25	12.37	13.50	14.62
31	6.41	7.00	7.58	8.16	8.75	9.33	10.50	11.66	12.83	14.00	15.16

WAGES, PER WEEK, FROM \$3.50 to \$12.00. FOR MANUFACTURERS & MECHANICS.

Days.	\$3.50	\$3.75	\$4.00	\$4.25	\$4.50	\$4.75	\$5.00	\$5.25	\$5.50	\$5.75	\$6.00
1	.14 $\frac{1}{2}$	.15 $\frac{1}{2}$	.16 $\frac{1}{2}$	.17 $\frac{1}{2}$	.18 $\frac{1}{2}$	.19 $\frac{1}{2}$	.20 $\frac{1}{2}$	.21 $\frac{1}{2}$	.22	.24	.25
2	.29	.31 $\frac{1}{2}$	.33 $\frac{1}{2}$	.35 $\frac{1}{2}$	.37 $\frac{1}{2}$	.39 $\frac{1}{2}$	.41 $\frac{1}{2}$	.43 $\frac{1}{2}$	.45 $\frac{1}{2}$	.48	.50
3	.43 $\frac{1}{2}$	.46 $\frac{1}{2}$	.50	.53	.56 $\frac{1}{2}$	.59 $\frac{1}{2}$	.62	.65	.68 $\frac{1}{2}$	.71 $\frac{1}{2}$	.75
4	.58 $\frac{1}{2}$	.62 $\frac{1}{2}$	.66 $\frac{1}{2}$	.70 $\frac{1}{2}$	.75	.79	.83 $\frac{1}{2}$	.87 $\frac{1}{2}$	.91 $\frac{1}{2}$	.95 $\frac{1}{2}$	1.00
5	1.16 $\frac{1}{2}$	1.25	1.33 $\frac{1}{2}$	1.41 $\frac{1}{2}$	1.50	1.58 $\frac{1}{2}$	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00
6	1.75	1.87 $\frac{1}{2}$	2.00	2.12 $\frac{1}{2}$	2.25	2.37 $\frac{1}{2}$	2.50	2.62 $\frac{1}{2}$	2.75	2.87 $\frac{1}{2}$	3.00
7	2.33 $\frac{1}{2}$	2.50	2.66 $\frac{1}{2}$	2.83 $\frac{1}{2}$	3.00	3.16 $\frac{1}{2}$	3.33 $\frac{1}{2}$	3.50	3.66 $\frac{1}{2}$	3.83 $\frac{1}{2}$	4.00
8	2.91 $\frac{1}{2}$	3.12 $\frac{1}{2}$	3.33 $\frac{1}{2}$	3.54 $\frac{1}{2}$	3.75	3.95 $\frac{1}{2}$	4.16 $\frac{1}{2}$	4.37 $\frac{1}{2}$	4.58 $\frac{1}{2}$	4.79	5.00
9	3.50	3.75	4.00	4.25	4.50	4.75	5.00	5.25	5.50	5.75	6.00
10	4.08 $\frac{1}{2}$	4.37 $\frac{1}{2}$	4.66 $\frac{1}{2}$	4.95 $\frac{1}{2}$	5.25	5.54	5.83 $\frac{1}{2}$	6.12 $\frac{1}{2}$	6.41 $\frac{1}{2}$	6.70 $\frac{1}{2}$	7.00
11	4.66 $\frac{1}{2}$	5.00	5.33 $\frac{1}{2}$	5.66 $\frac{1}{2}$	6.00	6.33 $\frac{1}{2}$	6.66 $\frac{1}{2}$	7.00	7.33 $\frac{1}{2}$	7.66 $\frac{1}{2}$	8.00
12	5.25	5.62 $\frac{1}{2}$	6.00	6.37 $\frac{1}{2}$	6.75	7.12 $\frac{1}{2}$	7.50	7.87 $\frac{1}{2}$	8.25	8.62 $\frac{1}{2}$	9.00
13	5.83 $\frac{1}{2}$	6.25	6.66 $\frac{1}{2}$	7.08 $\frac{1}{2}$	7.50	7.91 $\frac{1}{2}$	8.33 $\frac{1}{2}$	8.75	9.16 $\frac{1}{2}$	9.58 $\frac{1}{2}$	10.00
14	6.41 $\frac{1}{2}$	6.87 $\frac{1}{2}$	7.33 $\frac{1}{2}$	7.79	8.25	8.70	9.16 $\frac{1}{2}$	9.62 $\frac{1}{2}$	10.08 $\frac{1}{2}$	10.54	11.00
15	7.00	7.50	8.00	8.50	9.00	9.50	10.00	10.50	11.00	11.50	12.00
16	7.58 $\frac{1}{2}$	8.12 $\frac{1}{2}$	8.66 $\frac{1}{2}$	9.20 $\frac{1}{2}$	9.75	10.29	10.83 $\frac{1}{2}$	11.37 $\frac{1}{2}$	11.91 $\frac{1}{2}$	12.45 $\frac{1}{2}$	13.00
17	8.16 $\frac{1}{2}$	8.75	9.33 $\frac{1}{2}$	9.91 $\frac{1}{2}$	10.50	11.08 $\frac{1}{2}$	11.66 $\frac{1}{2}$	12.25	12.83 $\frac{1}{2}$	13.41 $\frac{1}{2}$	14.00
18	8.75	9.37 $\frac{1}{2}$	10.00	10.62 $\frac{1}{2}$	11.25	11.87 $\frac{1}{2}$	12.50	13.12 $\frac{1}{2}$	13.75	14.37 $\frac{1}{2}$	15.00
19	9.33 $\frac{1}{2}$	10.00	10.66 $\frac{1}{2}$	11.33 $\frac{1}{2}$	12.00	12.66 $\frac{1}{2}$	13.33 $\frac{1}{2}$	14.00	14.66 $\frac{1}{2}$	15.33 $\frac{1}{2}$	16.00
20	9.91 $\frac{1}{2}$	10.62 $\frac{1}{2}$	11.33 $\frac{1}{2}$	12.04	12.75	13.45	14.16 $\frac{1}{2}$	14.87 $\frac{1}{2}$	15.58 $\frac{1}{2}$	16.29	17.00
21	10.50	11.25	12.00	12.75	13.50	14.25	15.00	15.75	16.50	17.25	18.00
22	11.08 $\frac{1}{2}$	11.87 $\frac{1}{2}$	12.66 $\frac{1}{2}$	13.45 $\frac{1}{2}$	14.25	15.04	15.83 $\frac{1}{2}$	16.62 $\frac{1}{2}$	17.41 $\frac{1}{2}$	18.20 $\frac{1}{2}$	19.00
23	11.66 $\frac{1}{2}$	12.50	13.33 $\frac{1}{2}$	14.16 $\frac{1}{2}$	15.00	15.83 $\frac{1}{2}$	16.66 $\frac{1}{2}$	17.50	18.33 $\frac{1}{2}$	19.16 $\frac{1}{2}$	20.00
24	12.25	13.12 $\frac{1}{2}$	14.00	14.87 $\frac{1}{2}$	15.75	16.62 $\frac{1}{2}$	17.50	18.37 $\frac{1}{2}$	19.25	20.12 $\frac{1}{2}$	21.00
25	12.83 $\frac{1}{2}$	13.75	14.66 $\frac{1}{2}$	15.58 $\frac{1}{2}$	16.50	17.41 $\frac{1}{2}$	18.33 $\frac{1}{2}$	19.25	20.16 $\frac{1}{2}$	21.08 $\frac{1}{2}$	22.00
26	13.41 $\frac{1}{2}$	14.37 $\frac{1}{2}$	15.33 $\frac{1}{2}$	16.29	17.25	18.20 $\frac{1}{2}$	19.16 $\frac{1}{2}$	20.12 $\frac{1}{2}$	21.08 $\frac{1}{2}$	22.04	23.00
27	14.00	15.00	16.00	17.00	18.00	19.00	20.00	21.00	22.00	23.00	24.00
28	14.58 $\frac{1}{2}$	15.62 $\frac{1}{2}$	16.66 $\frac{1}{2}$	17.70 $\frac{1}{2}$	18.75	19.79	20.83 $\frac{1}{2}$	21.87 $\frac{1}{2}$	22.91 $\frac{1}{2}$	23.95 $\frac{1}{2}$	25.00
29	15.16 $\frac{1}{2}$	16.25	17.33 $\frac{1}{2}$	18.41 $\frac{1}{2}$	19.50	20.58 $\frac{1}{2}$	21.66 $\frac{1}{2}$	22.75	23.83 $\frac{1}{2}$	24.91 $\frac{1}{2}$	26.00
30	15.75	16.87 $\frac{1}{2}$	18.00	19.12 $\frac{1}{2}$	20.25	21.37 $\frac{1}{2}$	22.50	23.62 $\frac{1}{2}$	24.75	25.87 $\frac{1}{2}$	27.00
31	16.33 $\frac{1}{2}$	17.50	18.66 $\frac{1}{2}$	19.83 $\frac{1}{2}$	21.00	22.16 $\frac{1}{2}$	23.33 $\frac{1}{2}$	24.50	25.66 $\frac{1}{2}$	26.83 $\frac{1}{2}$	28.00
Days.	\$6.50	\$7.00	\$7.50	\$8.00	\$8.50	\$9.00	\$9.50	\$10.00	\$10.50	\$11.00	\$12.00
1	.27	.29	.31 $\frac{1}{2}$	.33 $\frac{1}{2}$	.35 $\frac{1}{2}$	.37 $\frac{1}{2}$	.39 $\frac{1}{2}$	.41 $\frac{1}{2}$	.43 $\frac{1}{2}$	.45 $\frac{1}{2}$	.50
2	.54	.58 $\frac{1}{2}$	.62 $\frac{1}{2}$	.66 $\frac{1}{2}$	.70 $\frac{1}{2}$	.75	.79	.83 $\frac{1}{2}$	.87 $\frac{1}{2}$	.91 $\frac{1}{2}$	1.00
3	.81 $\frac{1}{2}$	.87 $\frac{1}{2}$	.93 $\frac{1}{2}$	1.00	1.06 $\frac{1}{2}$	1.12 $\frac{1}{2}$	1.18 $\frac{1}{2}$	1.25	1.31 $\frac{1}{2}$	1.37 $\frac{1}{2}$	1.50
4	1.08 $\frac{1}{2}$	1.16 $\frac{1}{2}$	1.25	1.33 $\frac{1}{2}$	1.41 $\frac{1}{2}$	1.50	1.58 $\frac{1}{2}$	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	2.00
5	1.16 $\frac{1}{2}$	1.25	1.33 $\frac{1}{2}$	1.41 $\frac{1}{2}$	1.50	1.58 $\frac{1}{2}$	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00
6	1.33 $\frac{1}{2}$	1.41 $\frac{1}{2}$	1.50	1.58 $\frac{1}{2}$	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00	2.08 $\frac{1}{2}$	2.25
7	1.50	1.58 $\frac{1}{2}$	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00	2.08 $\frac{1}{2}$	2.16 $\frac{1}{2}$	2.25	2.50
8	1.66 $\frac{1}{2}$	1.75	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00	2.08 $\frac{1}{2}$	2.16 $\frac{1}{2}$	2.25	2.33 $\frac{1}{2}$	2.41 $\frac{1}{2}$	2.75
9	1.83 $\frac{1}{2}$	1.91 $\frac{1}{2}$	2.00	2.08 $\frac{1}{2}$	2.16 $\frac{1}{2}$	2.25	2.33 $\frac{1}{2}$	2.41 $\frac{1}{2}$	2.50	2.58 $\frac{1}{2}$	3.00
10	2.00	2.08 $\frac{1}{2}$	2.16 $\frac{1}{2}$	2.25	2.33 $\frac{1}{2}$	2.41 $\frac{1}{2}$	2.50	2.58 $\frac{1}{2}$	2.66 $\frac{1}{2}$	2.75	3.25
11	2.16 $\frac{1}{2}$	2.25	2.33 $\frac{1}{2}$	2.41 $\frac{1}{2}$	2.50	2.58 $\frac{1}{2}$	2.66 $\frac{1}{2}$	2.75	2.83 $\frac{1}{2}$	2.91 $\frac{1}{2}$	3.50
12	2.33 $\frac{1}{2}$	2.41 $\frac{1}{2}$	2.50	2.58 $\frac{1}{2}$	2.66 $\frac{1}{2}$	2.75	2.83 $\frac{1}{2}$	2.91 $\frac{1}{2}$	3.00	3.08 $\frac{1}{2}$	3.75
13	2.50	2.58 $\frac{1}{2}$	2.66 $\frac{1}{2}$	2.75	2.83 $\frac{1}{2}$	2.91 $\frac{1}{2}$	3.00	3.08 $\frac{1}{2}$	3.16 $\frac{1}{2}$	3.25	4.00
14	2.66 $\frac{1}{2}$	2.75	2.83 $\frac{1}{2}$	2.91 $\frac{1}{2}$	3.00	3.08 $\frac{1}{2}$	3.16 $\frac{1}{2}$	3.25	3.33 $\frac{1}{2}$	3.41 $\frac{1}{2}$	4.25
15	2.83 $\frac{1}{2}$	2.91 $\frac{1}{2}$	3.00	3.08 $\frac{1}{2}$	3.16 $\frac{1}{2}$	3.25	3.33 $\frac{1}{2}$	3.41 $\frac{1}{2}$	3.50	3.58 $\frac{1}{2}$	4.50
16	3.00	3.08 $\frac{1}{2}$	3.16 $\frac{1}{2}$	3.25	3.33 $\frac{1}{2}$	3.41 $\frac{1}{2}$	3.50	3.58 $\frac{1}{2}$	3.66 $\frac{1}{2}$	3.75	4.75
17	3.16 $\frac{1}{2}$	3.25	3.33 $\frac{1}{2}$	3.41 $\frac{1}{2}$	3.50	3.58 $\frac{1}{2}$	3.66 $\frac{1}{2}$	3.75	3.83 $\frac{1}{2}$	3.91 $\frac{1}{2}$	5.00
18	3.33 $\frac{1}{2}$	3.41 $\frac{1}{2}$	3.50	3.58 $\frac{1}{2}$	3.66 $\frac{1}{2}$	3.75	3.83 $\frac{1}{2}$	3.91 $\frac{1}{2}$	4.00	4.08 $\frac{1}{2}$	5.25
19	3.50	3.58 $\frac{1}{2}$	3.66 $\frac{1}{2}$	3.75	3.83 $\frac{1}{2}$	3.91 $\frac{1}{2}$	4.00	4.08 $\frac{1}{2}$	4.16 $\frac{1}{2}$	4.25	5.50
20	3.66 $\frac{1}{2}$	3.75	3.83 $\frac{1}{2}$	3.91 $\frac{1}{2}$	4.00	4.08 $\frac{1}{2}$	4.16 $\frac{1}{2}$	4.25	4.33 $\frac{1}{2}$	4.41 $\frac{1}{2}$	5.75
21	3.83 $\frac{1}{2}$	3.91 $\frac{1}{2}$	4.00	4.08 $\frac{1}{2}$	4.16 $\frac{1}{2}$	4.25	4.33 $\frac{1}{2}$	4.41 $\frac{1}{2}$	4.50	4.58 $\frac{1}{2}$	6.00
22	4.00	4.08 $\frac{1}{2}$	4.16 $\frac{1}{2}$	4.25	4.33 $\frac{1}{2}$	4.41 $\frac{1}{2}$	4.50	4.58 $\frac{1}{2}$	4.66 $\frac{1}{2}$	4.75	6.25
23	4.16 $\frac{1}{2}$	4.25	4.33 $\frac{1}{2}$	4.41 $\frac{1}{2}$	4.50	4.58 $\frac{1}{2}$	4.66 $\frac{1}{2}$	4.75	4.83 $\frac{1}{2}$	4.91 $\frac{1}{2}$	6.50
24	4.33 $\frac{1}{2}$	4.41 $\frac{1}{2}$	4.50	4.58 $\frac{1}{2}$	4.66 $\frac{1}{2}$	4.75	4.83 $\frac{1}{2}$	4.91 $\frac{1}{2}$	5.00	5.08 $\frac{1}{2}$	7.00
25	4.50	4.58 $\frac{1}{2}$	4.66 $\frac{1}{2}$	4.75	4.83 $\frac{1}{2}$	4.91 $\frac{1}{2}$	5.00	5.08 $\frac{1}{2}$	5.16 $\frac{1}{2}$	5.25	7.25
26	4.66 $\frac{1}{2}$	4.75	4.83 $\frac{1}{2}$	4.91 $\frac{1}{2}$	5.00	5.08 $\frac{1}{2}$	5.16 $\frac{1}{2}$	5.25	5.33 $\frac{1}{2}$	5.41 $\frac{1}{2}$	7.50
27	4.83 $\frac{1}{2}$	4.91 $\frac{1}{2}$	5.00	5.08 $\frac{1}{2}$	5.16 $\frac{1}{2}$	5.25	5.33 $\frac{1}{2}$	5.41 $\frac{1}{2}$	5.50	5.58 $\frac{1}{2}$	8.00
28	5.00	5.08 $\frac{1}{2}$	5.16 $\frac{1}{2}$	5.25	5.33 $\frac{1}{2}$	5.41 $\frac{1}{2}$	5.50	5.58 $\frac{1}{2}$	5.66 $\frac{1}{2}$	5.75	8.25
29	5.16 $\frac{1}{2}$	5.25	5.33 $\frac{1}{2}$	5.41 $\frac{1}{2}$	5.50	5.58 $\frac{1}{2}$	5.66 $\frac{1}{2}$	5.75	5.83 $\frac{1}{2}$	5.91 $\frac{1}{2}$	8.50
30	5.33 $\frac{1}{2}$	5.41 $\frac{1}{2}$	5.50	5.58 $\frac{1}{2}$	5.66 $\frac{1}{2}$	5.75	5.83 $\frac{1}{2}$	5.91 $\frac{1}{2}$	6.00	6.08 $\frac{1}{2}$	9.00
31	5.50	5.58 $\frac{1}{2}$	5.66 $\frac{1}{2}$	5.75	5.83 $\frac{1}{2}$	5.91 $\frac{1}{2}$	6.00	6.08 $\frac{1}{2}$	6.16 $\frac{1}{2}$	6.25	9.25
32	5.66 $\frac{1}{2}$	5.75	5.83 $\frac{1}{2}$	5.91 $\frac{1}{2}$	6.00	6.08 $\frac{1}{2}$	6.16 $\frac{1}{2}$	6.25	6.33 $\frac{1}{2}$	6.41 $\frac{1}{2}$	9.50
33	5.83 $\frac{1}{2}$	5.91 $\frac{1}{2}$	6.00	6.08 $\frac{1}{2}$	6.16 $\frac{1}{2}$	6.25	6.33 $\frac{1}{2}$	6.41 $\frac{1}{2}$	6.50	6.58 $\frac{1}{2}$	10.00
34	6.00	6.08 $\frac{1}{2}$	6.16 $\frac{1}{2}$	6.25	6.33 $\frac{1}{2}$	6.41 $\frac{1}{2}$	6.50	6.58 $\frac{1}{2}$	6.66 $\frac{1}{2}$	6.75	10.25
35	6.16 $\frac{1}{2}$	6.25	6.33 $\frac{1}{2}$	6.41 $\frac{1}{2}$	6.50	6.58 $\frac{1}{2}$	6.66 $\frac{1}{2}$	6.75	6.83 $\frac{1}{2}$	6.91 $\frac{1}{2}$	10.50
36	6.33 $\frac{1}{2}$	6.41 $\frac{1}{2}$	6.50	6.58 $\frac{1}{2}$	6.66 $\frac{1}{2}$	6.75	6.83 $\frac{1}{2}$	6.91 $\frac{1}{2}$	7.00	7.08 $\frac{1}{2}$	11.00
37	6.50	6.58 $\frac{1}{2}$	6.66 $\frac{1}{2}$	6.75	6.83 $\frac{1}{2}$	6.91 $\frac{1}{2}$	7.00	7.08 $\frac{1}{2}$	7.16 $\frac{1}{2}$	7.25	11.25
38	6.66 \frac										

READY RECKONER. MONTH WAGES TABLE FOR MECHANICS AND FARMERS.

The Mechanics' and Farmers' Month Table will be found particularly serviceable in casting up Days' Work by the Month, allowing 26 working days for a month, from \$5 to \$30, or any larger sum. If a person has engaged for \$27 a month, and works but 13 days, the figures under \$17 and \$10 can be added together, as follows:—13 days at \$10 amounts to \$5, and the same at \$17 amounts to \$8.50,—if both are added together, we have \$13.50 for 13 days, which is at the rate of \$27 per month, and so with any other amount.

Days.	\$5.00	\$6.00	\$7.00	\$8.00	\$9.00	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	\$18.00	\$19.00	\$20.00	\$25.00	\$29.00
1	19	23	27	31	35	39	43	46	50	54	58	62	66	69	73	77	96	1 16
2	39	46	54	62	69	77	85	92	1 00	1 08	1 16	1 23	1 31	1 39	1 46	1 54	1 92	2 31
3	58	69	81	92	1 04	1 16	1 27	1 39	1 50	1 62	1 73	1 85	1 96	2 08	2 19	2 31	2 89	3 46
4	77	93	1 08	1 23	1 39	1 54	1 69	1 85	2 00	2 16	2 31	2 46	2 62	2 77	2 92	3 08	3 85	4 62
5	96	1 15	1 35	1 54	1 73	1 92	2 12	2 31	2 50	2 69	2 89	3 08	3 27	3 46	3 65	3 85	4 81	5 77
6	1 16	1 39	1 62	1 85	2 08	2 31	2 54	2 77	3 00	3 23	3 46	3 69	3 92	4 16	4 38	4 62	5 77	6 92
7	1 35	1 62	1 89	2 16	2 42	2 69	2 96	3 23	3 50	3 77	4 04	4 31	4 58	4 85	5 12	5 39	6 73	8 08
8	1 54	1 85	2 16	2 46	2 77	3 08	3 39	3 69	4 00	4 31	4 62	4 92	5 23	5 54	5 85	6 16	7 69	9 23
9	1 73	2 08	2 43	2 77	3 12	3 46	3 81	4 16	4 50	4 85	5 19	5 54	5 89	6 23	6 58	6 93	8 66	10 38
10	1 92	2 31	2 69	3 08	3 46	3 85	4 23	4 62	5 00	5 39	5 77	6 15	6 54	6 92	7 31	7 69	9 63	11 54
11	2 12	2 54	2 96	3 37	3 81	4 23	4 65	5 08	5 50	5 92	6 35	6 77	7 19	7 62	8 04	8 46	10 53	12 69
12	2 31	2 76	3 23	3 69	4 16	4 62	5 08	5 54	6 00	6 46	6 92	7 39	7 85	8 31	8 77	9 23	11 54	13 85
13	2 50	3 00	3 50	4 00	4 50	5 00	5 50	6 00	6 50	7 00	7 50	8 00	8 50	9 00	9 50	10 00	12 50	15 00
14	2 69	3 23	3 77	4 31	4 85	5 39	5 92	6 46	7 00	7 54	8 08	8 62	9 16	9 69	10 23	10 77	13 46	16 16
15	2 89	3 46	4 04	4 62	5 19	5 77	6 35	6 92	7 50	8 08	8 66	9 23	9 81	10 39	10 96	11 54	14 43	17 31
16	3 08	3 69	4 31	4 92	5 54	6 15	6 77	7 39	8 00	8 62	9 23	9 85	10 46	11 08	11 69	12 31	15 39	18 46
17	3 27	3 92	4 53	5 23	5 89	6 54	7 19	7 85	8 50	9 16	9 81	10 46	11 12	11 77	12 42	13 08	16 35	19 62
18	3 46	4 16	4 85	5 54	6 23	6 92	7 62	8 31	9 00	9 69	10 39	11 08	11 77	12 46	13 15	13 85	17 31	20 77
19	3 66	4 39	5 12	5 85	6 58	7 31	8 01	8 77	9 50	10 23	10 96	11 69	12 42	13 16	13 89	14 62	19 27	21 92
20	3 85	4 62	5 39	6 16	6 92	7 69	8 46	9 23	10 00	10 77	11 54	12 31	13 08	13 85	14 62	15 39	19 23	23 08
21	4 04	4 85	5 66	6 46	7 27	8 08	8 89	9 69	10 50	11 31	12 12	12 92	13 73	14 51	15 35	16 16	20 19	24 23
22	4 23	5 08	5 92	6 77	7 62	8 46	9 31	10 16	11 00	11 85	12 69	13 54	14 39	15 23	16 08	16 92	21 15	25 38
23	4 43	5 31	6 19	7 08	7 96	8 85	9 73	10 62	11 50	12 39	13 27	14 15	15 04	15 92	16 81	17 69	22 12	26 54
24	4 62	5 54	6 40	7 30	8 31	9 23	10 16	11 08	12 00	12 92	13 85	14 77	15 69	16 62	17 54	18 46	23 08	27 69
25	4 81	5 77	6 73	7 69	8 66	9 63	10 53	11 54	12 50	13 46	14 42	15 39	16 35	17 31	18 27	19 23	24 04	28 85
26	5 00	6 00	7 00	8 00	9 00	10 00	11 00	12 00	13 00	14 00	15 00	16 00	17 00	18 00	19 00	20 00	25 00	30 00

Ready Reckoner for Boarding Houses, Hotels, &c.

[These Tables give the amount of every, and any number of Days, from 1 to 7, at from 50 Cents to 12 Dollars per week.]

When the board exceeds \$10. per week, add together, or double two numbers.

Days.	50 c.	75 c.	\$ 1 00	\$ 1 25	\$ 1 50	\$ 1 75	\$ 2 00	\$ 2 25	\$ 2 50	\$ 3 00
1	7	11	14	18	21	25	29	32	36	43
2	14	21	29	36	43	50	57	64	71	86
3	21	32	43	54	64	75	86	96	1 07	1 29
4	29	43	57	71	86	1 00	1 14	1 29	1 43	1 71
5	36	54	71	89	1 07	1 25	1 43	1 61	1 79	2 14
6	43	64	82	1 07	1 29	1 50	1 71	1 93	2 14	2 57
7	50	75	1 00	1 25	1 50	1 75	2 00	2 25	2 50	3 00

Days.	\$ 3 50	\$ 4 00	\$ 4 50	\$ 5 00	\$ 6 00	\$ 7 00	\$ 8 00	\$ 9 00	\$ 10 00
1	50	57	64	71	86	1 00	1 14	1 29	1 43
2	1 00	1 14	1 29	1 43	1 71	2 00	2 29	2 57	2 86
3	1 50	1 71	1 93	2 14	2 57	3 00	3 43	3 86	4 29
4	2 00	2 29	2 57	2 86	3 43	4 00	4 57	5 14	5 71
5	2 50	2 86	3 21	3 57	4 29	5 00	5 71	6 43	7 14
6	3 00	3 43	3 86	4 29	5 14	6 00	6 86	7 71	8 57
7	3 50	4 00	4 50	5 00	6 00	7 00	8 00	9 00	10 00

FREIGHTS.—QUANTITY OF GOODS WHICH COMPOSE A TON.

From the By-Laws of the New York Chamber of Commerce.

That the articles, the bulk of which shall compose a ton, to equal a ton of heavy materials, shall be in weight as follows: 1568 lbs. of coffee in casks, 1830 lbs. in bags; 1120 lbs. of cocoa in casks, 1307 lbs. in bags.

952 lbs. pimento in casks, 1110 in bags.

Eight barrels of flour, 196 lbs. each.

Six barrels of beef, pork, tallow, pickled fish, pitch, tar and turpentine.

Twenty hundred pounds of pig and bar iron, potashes, sugar, logwood, fustic, Nicaragua wood, and all heavy dyewoods, rice, honey, copper ore, and all other heavy goods.

Sixteen hundred pounds of coffee, cocoa, and dried codfish, in bulk, and twelve hundred pounds of dried codfish in casks of any size.

Six hundred pounds of ship bread in

casks, seven hundred in bags, and eight hundred in bulk.

Two hundred gallons (wine measure,) reckoning the full contents of the casks, oil, wine, brandy, or any kind of liquors.

Twenty-two bushels of grain, peas, or beans, in casks.

Thirty-six bushels of grain in bulk

Thirty-six bushels of European salt.

Thirty-one bushels W. India salt.

Twenty-nine bushels of sea-coal.

Forty feet (cubic measure) of mahogany, square timber, oak plank, pine, and other boards, beavers, furs, peltry, beeswax, cotton, wool, and bale goods of all kinds.

One hogshead of tobacco, and ten hundred pounds of dry hides.

Eight hundred pounds of China raw silk, ten hundred pounds of net bohea, and 800 green tea.

EXCHANGE ON ENGLAND.

5 pr. ct.	\$4.66.7	7 pr. ct.	\$4.75.6	8 $\frac{3}{4}$ pr. ct.	\$4.83.3	10 $\frac{1}{2}$ pr. ct.	\$4.91.1
5 $\frac{1}{2}$. . .	4.68 0	7 $\frac{1}{2}$. . .	4.76.7	9 . . .	4.84.4	10 $\frac{3}{4}$. . .	4.92.2
5 $\frac{3}{4}$. . .	4.70.0	7 $\frac{3}{4}$. . .	4.77.8	9 $\frac{1}{2}$. . .	4.85.6	11 . . .	4.93.3
6 . . .	4.71.1	7 $\frac{7}{8}$. . .	4.78.9	9 $\frac{3}{4}$. . .	4.86.7	11 $\frac{1}{2}$. . .	4.94.4
6 $\frac{1}{2}$. . .	4.72.2	8 . . .	4.80.0	9 $\frac{7}{8}$. . .	4.87.8	11 $\frac{3}{4}$. . .	4.95.6
6 $\frac{3}{4}$. . .	4.73.3	8 $\frac{1}{2}$. . .	4.81.1	10 . . .	4.88.9	11 $\frac{7}{8}$. . .	4.96.7
6 $\frac{7}{8}$. . .	4.74.4	8 $\frac{3}{4}$. . .	4.82.2	10 $\frac{1}{2}$. . .	4.90.0	12 . . .	4.97.8

Old par value of the Pound Sterling is \$4 44.4. Present standard value is \$4 84.4. When exchange is at 9 per cent. it is then at par value; if less than 9 it is below, if higher than 9 it is above.

To reduce old par value, \$4 44.4, to dollars, multiply by 40, and divide by 9. To reduce dollars to old par value, reverse by multiplying by 9 and dividing by 40. The shillings and pence must first be reduced to decimals of a pound.

BANK INTEREST TABLE—FOR 365 DAYS—AT 6 PER CENT. PER ANNUM.

[From One Dollar to One Thousand Dollars, and from One Day to Thirty Days, and to Three Months.—Carefully compared with the best Tables.]

Days.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	1 m.	2 m.	3 m.
Dolls.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.
\$	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	1 m.	2 m.	3 m.
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
60	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
70	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
80	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
90	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
200	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
300	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2
\$ 1000	16	33	49	66	82	99	115	132	148	164	181	197	212	230	247	263	279	296	313	329	345	362	378	394	411	427	443	460	477	493	500	10.00	15.00

FIRST EXAMPLE AT 6 PER CENT.

Required 37 days interest on \$ 90 dollars.

Interest on \$ 90. for 30 days, 44 cents.

Interest on \$ 90 for 7 days, 10 cents.

Answer 54 cents.

SECOND EXAMPLE AT 6 PER CENT.

Required 1 month and 3 days' interest on 104 dollars.

Interest on \$ 100 for 1 month is 50 cents.

Interest on \$ 4 for 1 month is 2 cents.

Interest on \$ 100 for 3 days is 5 cents.

Interest on \$ 4 for 3 days is 0 cents.

Answer, 57 cents.

METHOD OF CALCULATING INTEREST AT 6 PER CT.

Multiply the Sum by the number of Days, divide the Product by 6, then strike off the right hand figure.

EXAMPLE:—
200 dollars
multiplied by 11 days.

Divide by 6) 2200 (36 [0] cents is the interest

NEW YORK BANK INTEREST TABLE—FOR 365 DAYS—AT 7 PER CENT. PER ANNUM.

[From One Dollar to One Thousand, and from One Day to Thirty Days, and to Three Months.—Carefully compared with the best Tables.]

Days.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	1 m	2 m	3 m
Dolls.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.	
\$	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
60	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
70	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
80	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
90	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
200	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
300	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
1000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

FIRST EXAMPLE AT 7 PER CENT.

Required 2 months and 8 days interest on \$ 95.
Interest on \$ 90 for 2 mo. is \$ 1.05
Interest on \$ 5 for 2 mo. is 14
Interest on \$ 90 for 8 days is 14
Interest on \$ 5 for 8 days is 9
Answer, \$ 1.25

SECOND EXAMPLE AT 7 PER CENT.

Required 19 days interest on 170 Dollars.
Interest on \$ 100 for 19 days, 36 cents.
Interest on \$ 70 for 19 days, 26 cents.
Answer, 62 cents.

When 7 per cent interest is required add to the interest of 6 per cent its one-sixth—as follows:—

Suppose the interest 36 cts, as in example on page 107.
One-sixth of 36 is 6, which added to 36 makes 42, the interest of \$ 200 for 11 days at 7 per cent; and so if 8 per cent is required, add one-third; and if 6 per cent is required, deduct one-sixth from 6 per cent.

MONTH INTEREST TABLE, AT SIX PER CENT PER ANNUM.

Doll.	1 Mo	2 Mo	3 Mo	4 Mo	5 Mo	6 Mo	7 Mo	8 Mo	9 Mo	10 M	11 M	1 Yr
1	.1	.1	.2	.2	.3	.3	.4	.4	.5	.5	.6	.6
2	.1	.2	.3	.4	.5	.6	.7	.8	.9	.10	.11	.12
3	.2	.3	.5	.6	.8	.9	.11	.12	.14	.15	.17	.18
4	.2	.4	.6	.8	.10	.12	.14	.16	.18	.20	.22	.24
5	.3	.5	.8	.10	.13	.15	.18	.20	.23	.25	.28	.30
6	.3	.6	.9	.12	.15	.18	.21	.24	.27	.30	.33	.36
7	.4	.7	.11	.14	.18	.21	.25	.28	.32	.35	.39	.42
8	.4	.8	.12	.16	.20	.24	.28	.32	.36	.40	.44	.48
9	.5	.9	.14	.18	.23	.27	.32	.36	.41	.45	.50	.54
10	.5	.10	.15	.20	.25	.30	.35	.40	.45	.50	.55	.60
15	.8	.15	.23	.30	.38	.45	.53	.60	.68	.75	.83	.90
20	.10	.20	.30	.40	.50	.60	.70	.80	.90	1.00	1.10	1.20
25	.13	.25	.38	.50	.63	.75	.88	1.00	1.13	1.25	1.38	1.50
30	.15	.30	.45	.60	.75	.90	1.05	1.20	1.35	1.50	1.65	1.80
40	.20	.40	.60	.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40
50	.25	.50	.75	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00
60	.30	.60	.90	1.20	1.50	1.80	2.10	2.40	2.70	3.00	3.30	3.60
70	.35	.70	1.05	1.40	1.75	2.10	2.45	2.80	3.15	3.50	3.85	4.20
80	.40	.80	1.20	1.60	2.00	2.40	2.80	3.20	3.60	4.00	4.40	4.80
90	.45	.90	1.35	1.80	2.25	2.70	3.15	3.60	4.05	4.50	4.95	5.40
100	.50	1.00	1.50	2.00	2.50	3.00	3.50	4.00	4.50	5.00	5.50	6.00
200	1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00
300	1.50	3.00	4.50	6.00	7.50	9.00	10.50	12.00	13.50	15.00	16.50	18.00
400	2.00	4.00	6.00	8.00	10.00	12.00	14.00	16.00	18.00	20.00	22.00	24.00
500	2.50	5.00	7.50	10.00	12.50	15.00	17.00	20.00	22.50	25.00	27.50	30.00
1000	5.00	10.00	15.00	20.00	25.00	30.00	35.00	40.00	45.00	50.00	55.00	60.00

MONTH INTEREST TABLE, AT SEVEN PER CENT PER ANNUM.

Doll.	1 Mo	2 Mo	3 Mo	4 Mo	5 Mo	6 Mo	7 Mo	8 Mo	9 Mo	10 M	11 M	1 Yr
1	.1	.1	.2	.2	.3	.4	.4	.5	.5	.6	.6	.7
2	.1	.2	.4	.5	.6	.7	.8	.9	.11	.12	.13	.14
3	.2	.4	.5	.7	.9	.11	.12	.14	.16	.18	.19	.21
4	.2	.5	.7	.9	.12	.14	.16	.19	.21	.23	.26	.28
5	.3	.6	.9	.12	.15	.18	.20	.23	.26	.29	.32	.35
6	.4	.7	.11	.14	.18	.21	.25	.28	.32	.35	.39	.42
7	.4	.8	.12	.16	.20	.25	.29	.33	.37	.41	.45	.49
8	.5	.9	.14	.19	.23	.28	.33	.37	.42	.47	.51	.56
9	.5	.11	.16	.21	.26	.32	.37	.42	.47	.53	.58	.63
10	.6	.12	.18	.23	.29	.35	.41	.47	.53	.58	.64	.70
15	.9	.18	.26	.35	.44	.53	.61	.70	.79	.88	.96	1.05
20	.12	.23	.35	.47	.58	.70	.82	.93	1.05	1.17	1.28	1.40
25	.15	.29	.44	.58	.73	.88	1.02	1.17	1.31	1.46	1.60	1.75
30	.18	.35	.53	.70	.88	1.05	1.23	1.40	1.58	1.75	1.93	2.10
40	.23	.47	.70	.93	1.17	1.40	1.63	1.87	2.10	2.33	2.57	2.80
50	.29	.58	.88	1.17	1.46	1.75	2.04	2.33	2.63	2.92	3.21	3.50
60	.35	.70	1.05	1.40	1.75	2.10	2.45	2.80	3.15	3.50	3.85	4.20
70	.41	.82	1.23	1.63	2.04	2.45	2.86	3.27	3.68	4.08	4.49	4.90
80	.47	.93	1.40	1.87	2.33	2.80	3.27	3.73	4.20	4.67	5.13	5.60
90	.53	1.05	1.58	2.10	2.63	3.15	3.68	4.20	4.73	5.25	5.78	6.30
100	.55	1.17	1.75	2.33	2.92	3.50	4.08	4.67	5.25	5.83	6.42	7.00
200	1.17	2.33	3.50	4.67	5.83	7.00	8.17	9.33	10.50	11.67	12.83	14.00
300	1.75	3.50	5.25	7.00	8.75	10.50	12.25	14.00	15.75	17.50	19.25	21.00
400	2.33	4.67	7.00	9.33	11.67	14.00	16.33	18.67	21.00	23.33	25.67	28.00
500	2.92	5.83	8.75	11.67	14.58	17.50	20.42	23.33	26.25	29.17	32.08	35.00
1000	5.83	11.67	17.50	23.33	29.17	35.00	40.83	46.67	52.50	58.33	64.17	70.00

QUICK METHOD OF CALCULATING INTEREST FOR DAYS.

Multiply the principal by the number of days and divide the product (if for 5 per cent.) by 7200; (if for 6 per cent.) by 6000; (if for 7 per cent.) by 5143; (if for 8 per cent.) by 4500; (if for 9 per cent.) by 4000; (if for 10 per cent.) by 3600.

EXAMPLE.—What is the interest on \$120 for 20 days at 10 per cent.

120 00 dollars,
Multiplied by 20 days,

Divided by 3600)2400.00 (66.6 cents interest.

Example—To ascertain the number of days from May 15 to Oct. 15, look opposite May in the column where October is marked, and the number will be found to be 153.

TABLE for Banking and Equation, showing the number of days from any Date in one Month, to the same Date in any other Month. *Example.* How many days from the 2d of February to the 2d of August? Look for February at the left hand, and August at the top, in the angle is 181.

1855. From To	Jan.	Feb.	Mar.	April	May.	June.	July.	Aug.	Sep.	Oct.	Nov.	Dec.
Jan.	365	31	59	90	120	151	181	212	243	273	304	334
Feb.	334	365	28	59	89	120	150	181	212	242	273	303
Mar.	306	337	365	31	61	92	122	153	184	214	245	275
April.	275	306	334	365	30	61	91	122	153	183	214	244
May.	245	276	304	335	365	31	61	92	123	153	184	214
June.	214	245	273	304	334	365	30	61	92	122	153	183
July.	184	215	243	274	304	335	365	31	62	92	123	153
Aug.	153	184	212	243	273	304	334	365	31	61	92	122
Sep.	122	153	181	212	242	273	303	334	365	30	61	91
Oct.	92	123	151	182	212	243	273	304	335	365	31	61
Nov.	61	92	120	151	181	212	242	273	304	334	365	30
Dec.	31	62	90	121	151	182	212	243	274	304	335	365

Example.—A Bill drawn March 29, at 3 months, is due June 29, but adding 3 days' grace, it is not payable till July 2. Find the number of days by the Table.

NOTE.—If Leap-Year, add one Day if February be included.

EQUATION OF PAYMENTS.

RULE.—Multiply each Debt by the time in which it is Payable, and divide the Sum of the Products by the Sum of the Debts—as follows:

Bought at 4 months' credit. When is the equated time of payment?

1855.	Am't.	Days.	Products.
March 1.	\$ 50.00		
" 7.	67.00	Multiplied by 6	equal 402.00
" 12.	32.00	" 11	" 352.00
" 19.	82.00	" 18	" 1476.00
\$ 231.00			) 2230.00 (9 days. 2079.00

2230.00 being divided by 231.00 gives 9 days and 151.00 as the remainder, which latter being more than half of 231.00, counts a whole day.

The column of days represents the number of days after July 1 (4 months after March 1,) at which time the several debts become payable. The quotient 9 days (and the remainder) added to July 1 gives July 11 for the equated time.

ANOTHER METHOD FOR FINDING THE AVERAGE PAYMENT OF DIFFERENT PAYMENTS.

RULE.—Find the interest, by Interest Tables, on each item from the date of each charge to the date of the last charge. Add up the interest of these several charges, and then ascertain how long a time it will take for the total of the account to make that amount of Interest—then deduct this time from the date of the last charge in the account, and this will give you the month and day of the average. Cents may be disregarded unless over 50, and counting them as an additional dollar if they are 50 or more.

Bought at 4 months.. When is the average time of payment?

March 1, \$200.	From March 1 to July 1 is 122 days.—Interest \$ 4 07
April 2, 70.	" April 2 to July 1 is 90 days.—" 1 05
May 4, 30.	" May 4 to July 1 is 58 days.—" 29
June 6, 50.	" June 6 to July 1 is 25 days.—" 21
July 1, 50.	
\$400.	\$5 61

The Interest on \$400, for 2 months and 24 days is \$5 60. Now deduct the amount of time (2 months and 24 days) from the date of the last charge, (July 1,) and this will give April 6, as the month and day for the average, and Aug. 6th as the day of payment.

110 GOLD COINS, WITH THEIR WEIGHT AND VALUE.

GOLD COINS WITH THEIR WEIGHT AND VALUE.

[24 grains equal 1 pennyweight, 20 pennyweights 1 ounce, 12 ounces 1 pound.]

Denomination.	Weight.	Val.	Denomination.	Weight.	Val.
UNITED STATES.			FRANCE.		
	gr.	\$ c.		dt. gr.	\$ c.
Eagle before 1834,	270	10 66	D ^{ble} Louis, (before 1786),	10 11	9 71
($\frac{1}{2}$ & $\frac{1}{4}$ in proportion.)			Louis, do	5 4	4 79
Eagles, after 1834,	258	10 00	D ^{ble} Louis, (since 1786),	9 20	9 16
Double Eagle,	516	20 00	Louis, do	4 22	4 52
Half Eagle,	129	5 00	Double Napoleon, or 40		
Three Dollar piece,	77.4	3 00	Francs,	8 7	7 68
Quarter Eagle,	64.5	2 50	Napoleon, or 20 Francs, .	4 3 $\frac{1}{2}$	3 84
Gold Dollar,	25.8	1 00	HOLLAND.		
AUSTRIA.				dt. gr.	\$ c.
	dt. gr.	\$ c.	Double Ryder,	12 21	12 20
Quadruple Ducat,	9 00	9 12	Ryder,	6 9	6 04
Ducat,	2 5 $\frac{1}{2}$	2 28	Ducat,	2 5 $\frac{1}{2}$	2 27
Souverain (for Lombardv)	7 7	6 75	HAMBURGH.		
BAVARIA.			Ducat, (double in prop.) .	2 5 $\frac{1}{2}$	2 27
			HANOVER.		
Carolín,	6 5 $\frac{1}{2}$	4 93	Ten Thaler, George II. .	8 13	7 84
Ducat,	2 5 $\frac{1}{2}$	2 27	Do. Wm. IV. & Ernest, .	8 13	7 89
BELGIUM.			Fine Thaler,	4 6	3 91
			Ducat,	2 5 $\frac{1}{2}$	2 28
Twenty Franc pieces, . .	4 3 $\frac{1}{2}$	3 82	HINDUSTAN.		
Forty Franc pieces, . . .	8 7	7 67	Mohur, E. I. Co.	7 12	7 10
BOLIVIA.			NETHERLANDS.		
Doubleloon,	17 8 $\frac{1}{2}$	15 58	Ducat,	2 5 $\frac{1}{2}$	2 27
BRAZIL.			Ten Gilders, ($\frac{1}{2}$ in prop.) .	4 7 $\frac{1}{2}$	4 09
Johannes, ($\frac{1}{2}$ in prop.) . .	18 00	17 4	NEW GRENADA.		
Dobroan,	34 12	32 71	Doubleloon, (of various fine-		
Dobra,	18 16	17 31	ness) from \$15.31 to \$15.-		
Moldore, ($\frac{1}{2}$ in prop.) . .	6 22	6 56	71, generally weigh the		
Piece of 6,400 reis,	9 6	8 72	same as a dollar, average	17 8 $\frac{1}{2}$	15 53
BRUNSWICK & MECKLENBURG.			MEXICO.		
Ten Thaler, 1813 to 1838, |	8 13	7 89	Doubleloon, (shares in prop.)		
CENTRAL AMERICA.			various dates coined at		
Doubleloon,	17 9	14 96	different mints, varying		
COLUMBIA.			in value from \$15 44 to		
Doubleloon,	17 8 $\frac{1}{2}$	15 62	\$15 67, average, . . .	17 8 $\frac{1}{2}$	15 53
CHILI.			PRUSSIA.		
Doubleloon, (before 1835.)	17 9	15 57	Frederick D ^{or} ,	4 6	3 95
" (after 1835,)	17 9	15 66	Double do, 1831,	8 13	7 97
DENMARK.			Do. do. to 1811,	8 13	7 92
			RUSSIA.		
Ten Thaler,	8 13	7 88	Five Rubles,	4 4	3 95
Fred. D ^{or} , 1813 to 1839, |	4 6	3 93	Ducat, 1796,	2 18	2 76
ENGLAND.			Imperial, 1801, ($\frac{1}{2}$ in prop.)	8 7	7 84
			SARDINIA.		
Guinea, ($\frac{1}{2}$ in prop.) . . .	5 8	5 05	Twenty Lire,	4 3	3 83
Sovereigns, ($\frac{1}{2}$ in prop.) .	5 3 $\frac{1}{2}$	4 85	SWEDEN.		
" (Double)	10 6 $\frac{1}{2}$	9 70	Ducat,	2 5	2 23
EAST INDIES.			SPAIN.		
			Quadruple Pistole, or Doub-		
Rupée, Bombay,	7 11	7 09	loon, ($\frac{1}{2}$ in prop.) 1772, . .	17 8 $\frac{1}{2}$	16 03
Rupée, Madras,	7 12	7 11	Doubleloon, 1801,	17 9	15 54
Pagoda, Star,	2 4 $\frac{1}{2}$	1 79	Pistole ($\frac{1}{4}$ Doubleloon), . . .	4 8 $\frac{1}{2}$	3 90
SAXONY.					
Double Aug. D ^{or} , 1837, .	8 13	7 94			
Ducat,	2 6	2 26			

RATES OF SILVER MONEY AND FOREIGN CURRENCY

(Established by Law.—Custom House Value.)

	\$ c. m.		\$ c. m.
DOLLAR of U. S. ($\frac{1}{2}$ & $\frac{1}{4}$ in prop.)	1.00	DOUBLE THALER of Prussia,	1.39
of Austria, - - - - -	.97	REAL VELLON of Spain, - - -	.5
of Sweden, (species daler,) -	1.04	of Plate, - - - - -	10
of Norway, (Rigsbank daler)	1.05	PISTAREEN (4 Real Vellons of	
of Netherlands, - - - - -	1.00	Spain,) - - - - -	19 5
of Denmark, (Species daler,) -	1.04	POUND of British Provinces, -	4.00
of Bremen, - - - - -	.78 7	of Jamaica, Turks Island, and	
of Bolivia, Peru & Chili, - -	1.00 6	Honduras, - - - - -	3.00
of Central Am. uncertain, -	.97	of Nassau, - - - - -	2.50
of Mexico, 8 reals, (varying		DUCAT of Naples, - - - - -	.80
from 95 to 100,) - - - - -	1.00	OUNCE of Sicily, - - - - -	2.40
of New Grenada, (usual wt.)	1.02	SCUDO of Malta, - - - - -	.40
POUND Sterling of Gr. Britain,	4.84	of Naples, - - - - -	.94
HALF CROWN of - - - - -	.54	of Rome, - - - - -	1.00 5
SHILLING of - - - - -	.22	PEZZO of Leghorn, - - - - -	.90 7
FOURPENCE of - - - - -	.7	MILL REA of Azores, - - - -	.83 3
FRANC of France and Belgium,	18 5	of Madeira, - - - - -	1.00
FIVE FRANC of France, - - -	.93	of Portugal, - - - - -	1.12
RIX DOLLAR of Austria, - - -	.97	MARC BANCO of Hamburg, -	.35
of Berlin & Saxony, - - - -	.69	ROUBLE of Russia, silver, -	.75
of Batavia, - - - - -	.75	of Russia, paper, - - - - -	21 4
THALER of Prussia, Saxony,		PIASTRE of Turkey, - - - - -	.5
Brunswick, & Hesse Cassel,	.68	TWENTY PIASTRES of Turkey,	.82
of Leipsic and Hanover, -	.69	LIRA, (for Lombardy & Tuscany),	.16
FLORENS and GUILDERS of Nu-		TWENTY KREUTZERS, - - - -	.16
remburg, St. Gall, Frank-		LIRA of Sardinia, - - - - -	18 5
fort, Netherlands, Bavaria,		FIVE LIRA of Sardinia, - - -	93 2
Brazil, Baden, Amsterdam,		LIVRE of Genoa, - - - - -	18 5
and Rotterdam, - - - - -	.40	of Catalonia & Barcelona, -	53 5
of Austria, Trieste, Bohemia		of Neufchatel, - - - - -	26 5
Liepsic, and Augsburg, -	48 5	TALE of China, - - - - -	1.48
of Prussia, - - - - -	.23	PAGODA of Madras, - - - - -	1.84
of Tuscany, - - - - -	.26	CROWN of Tuscany, - - - -	1.05
of Brabant, - - - - -	.34	PAGODA of India - - - - -	1.84
GUILDER of Wurtemberg,	39 5	RUPEE of British India, - -	44 5

Most foreign Silver Coins possess a higher standard value than the present United States coinage.

VALUE, WEIGHT AND LAW REGULATING THE TENDER OF U. STATES COINS.

Names of the Coins.	Grains.	Value.
One Dollar, or ten Dimes, (No change in Law.) - -		100
Half Dollar, or five Dimes, - - - - -	192.	50
Quarter Dollar, or two and a half Dimes, - - -	96.	25
One Dime, - - - - -	38.4	10
Half Dime, - - - - -	19.2	5
Three Cent piece, - - - - -	11.52	3

The laws of the United States make one cent pieces a legal tender for amounts not exceeding 10 cents,—three cent pieces for amounts not exceeding 30 cents.—U. States Silver Coins for amounts not exceeding 5 dollars,—and Gold Coins at their respective values.

The Standard fineness of U. States Gold and Silver Coins is *one weight of alloy to nine weights of pure metal*. The alloy for Gold Coin is Silver and Copper, and Copper for Silver Coin.

The silver coins of Great Britain are not legal tender in that country in sums exceeding £2.

112 REDUCTION OF FOREIGN MONEY TO U. STATES.

REDUCTION OF FOREIGN MONEY.

A U. States Silver Dollar weighs 412½ grains; Half Dollar 206½; Quarter Dollar 103; Dime 41; Half Dime 20. Spanish Dollar, of late coinage, 416 grains; Half Dollar 208; Quarter Dollar (1774) 103½; One-Eighth, or, Real, 45; One-Sixteenth, or, 6½ Cent piece, 21.

ENGLISH STERLING REDUCED TO DOLLARS AND CENTS.

s.	c. m.	s.	c. m.	£	\$ c.	£	\$ c.	£	\$ c.	£	\$ c.	£	\$ c.	£	\$ c.
1	242	11	266 2	1	484	11	53 24	21	101 64	31	150 04	41	198 44		
2	484	12	290 4	2	9 68	12	58 08	22	106 48	32	154 88	42	203 28		
3	726	13	314 6	3	14 52	13	62 92	23	111 32	33	159 72	43	205 12		
4	968	14	338 8	4	19 36	14	67 76	24	116 16	34	164 56	44	212 96		
5	1210	15	363 0	5	24 20	15	72 60	25	121 00	35	169 40	45	217 80		
6	1452	16	387 2	6	29 04	16	77 44	26	125 84	36	174 24	46	222 64		
7	1694	17	411 4	7	33 88	17	82 28	27	130 68	37	179 08	47	227 48		
8	1936	18	435 6	8	38 72	18	87 12	28	135 52	38	183 92	48	232 32		
9	2178	19	459 8	9	43 56	19	91 96	29	140 36	39	188 76	49	237 16		
10	2420	20	484 0	10	48 40	20	96 80	30	145 20	40	193 60	50	242 00		

FRENCH FRANCS REDUCED TO DOLLARS AND CENTS.

fr	\$ cts	fr	\$ cts	fr	\$ cts	fr	\$ cts	fr	\$ cts	fr	\$ cts	frs	\$ cts
1	19 16	2 98	31 577	46	8 56	61	11 35	76	14 14	91	16 93		
2	37 17	3 16	32 595	47	8 74	62	11 53	77	14 32	92	17 11		
3	56 18	3 35	33 614	48	8 93	63	11 72	78	14 51	93	17 30		
4	74 19	3 53	34 632	49	9 11	64	11 90	79	14 69	94	17 48		
5	93 20	3 72	35 651	50	9 30	65	12 09	80	14 88	95	17 67		
6	112 21	3 91	36 670	51	9 49	66	12 28	81	15 07	96	17 86		
7	130 22	4 09	37 688	52	9 67	67	12 46	82	15 25	97	18 04		
8	149 23	4 28	38 707	53	9 86	68	12 65	83	15 44	98	18 22		
9	167 24	4 46	39 725	54	10 04	69	12 83	84	15 62	99	18 41		
10	186 25	4 65	40 744	55	10 23	70	13 02	85	15 81	100	18 60		
11	205 26	4 84	41 763	56	10 42	71	13 21	86	16 00	200	37 20		
12	223 27	5 02	42 781	57	10 60	72	13 39	87	16 18	300	55 80		
13	242 28	5 21	43 800	58	10 79	73	13 58	88	16 37	400	74 40		
14	260 29	5 39	44 818	59	10 97	74	13 76	89	16 55	500	93 00		
15	279 30	5 58	45 837	60	11 16	75	13 95	90	16 74	600	111 60		

THALERS REDUCED TO DOLLARS AND CENTS.

T	\$ c.	T	c. \$	T	\$ c.	T	\$ c.	T	\$ c.	T	\$ c.	T	\$ c.
1	69	8 5 52	15 10 35	22 15 18	29 20 1	36 24 84	43 29 67						
2	138	9 6 21	16 11 4	23 15 87	30 20 70	37 25 53	44 30 36						
3	207	10 6 90	17 11 73	24 16 56	31 21 39	38 26 22	45 31 5						
4	276	11 7 59	18 12 42	25 17 25	32 22 8	39 26 91	46 31 74						
5	345	12 8 28	19 13 11	26 17 94	33 22 77	40 27 60	47 32 43						
6	414	13 8 97	20 13 80	27 18 63	34 23 46	41 28 29	48 33 12						
7	483	14 9 66	21 14 49	28 19 32	35 24 15	42 28 98	49 33 81						

BREMEN RIX DOLLARS REDUCED TO DOLLARS AND CENTS.

r. d.	\$ c.	r. d.	\$ c.	r. d.	\$ c.	r. d.	\$ c.	r. d.	\$ c.	r. d.	\$ c.
1	78½	9 7 09	17 13 39	25 19 69	33 25 99	41 32 29					
2	158	10 7 88	18 14 18	26 20 48	34 26 78	42 33 08					
3	236	11 8 66	19 14 96	27 21 26	35 27 56	43 33 86					
4	315	12 9 45	20 15 75	28 22 05	36 28 35	44 34 65					
5	394	13 10 24	21 16 54	29 22 84	37 29 14	45 35 44					
6	473	14 11 03	22 17 33	30 23 63	38 29 93	46 36 23					
7	551	15 11 81	23 18 11	31 24 41	39 30 71	47 37 01					
8	630	16 12 60	24 18 90	32 25 20	40 31 50	48 37 80					

COMPOUND INTEREST,—FOR SAVINGS BANKS, &c.

This Table contains the amount of \$1 or £1 at the rates of 3, 3½, 4, 4½, 5, 6, and 7 per cent., compound interest, in dollars and decimals of a dollar, from 1 to 40 years. The amount of any given sum is found by multiplying the amount of \$1 found in the Table at the given rate per cent., and for the given time. If a greater number of years is required, multiply the amount by the years.

Yrs.	3 per Cent.	3½-2 per Ct.	4 per Cent.	4½-2 per Ct.	5 per Cent.	6 per Cent.	7 per Cent.
1	1.03000	1.03500	1.04000	1.04500	1.05000	1.06000	1.070000
2	1.06090	1.07122	1.08160	1.09202	1.10250	1.12360	1.144900
3	1.09273	1.10872	1.12486	1.14117	1.15762	1.19102	1.225043
4	1.12551	1.14752	1.16986	1.19252	1.21551	1.26248	1.310796
5	1.15927	1.18769	1.21665	1.24618	1.27628	1.33823	1.402552
6	1.19405	1.22925	1.26532	1.30226	1.34010	1.41852	1.500730
7	1.22987	1.27228	1.31593	1.36086	1.40710	1.50363	1.605781
8	1.26677	1.31681	1.36857	1.42210	1.47745	1.59385	1.718186
9	1.30477	1.36290	1.42331	1.48609	1.55133	1.68948	1.838459
10	1.34392	1.41060	1.48024	1.55297	1.62859	1.79085	1.967151
11	1.38423	1.45997	1.53945	1.62285	1.71034	1.89530	2.104852
12	1.42576	1.51107	1.60103	1.69586	1.79586	2.01220	2.252192
13	1.46853	1.56396	1.66507	1.77220	1.88565	2.13293	2.409845
14	1.51259	1.61869	1.73168	1.85194	1.97993	2.26090	2.578534
15	1.55797	1.67535	1.80094	1.93528	2.07893	2.39656	2.759031
16	1.60471	1.73399	1.87298	2.02237	2.18287	2.54035	2.952164
17	1.65285	1.79467	1.94790	2.11338	2.29202	2.69277	3.158815
18	1.70243	1.85749	2.02582	2.20848	2.40662	2.85434	3.379931
19	1.75351	1.92250	2.10685	2.30786	2.52695	3.02560	3.616526
20	1.80611	1.98979	2.19112	2.41171	2.65330	3.20713	3.869683
21	1.86029	2.05943	2.27877	2.52024	2.78596	3.39956	4.140561
22	1.91610	2.13151	2.36992	2.63365	2.92526	3.60354	4.430400
23	1.97359	2.20611	2.46471	2.75217	3.07152	3.81975	4.740528
24	2.03279	2.28333	2.55330	2.87601	3.22510	4.04893	5.072365
25	2.09378	2.36324	2.66584	3.00543	3.38635	4.29187	5.427431
26	2.15659	2.44596	2.77247	3.14068	3.55567	4.54938	5.807351
27	2.22129	2.53157	2.88337	3.28201	3.73346	4.82225	6.213866
28	2.28793	2.62018	2.99870	3.42970	3.92013	5.11169	6.648836
29	2.35656	2.71188	3.11565	3.58404	4.11614	5.41839	7.114255
30	2.42726	2.80679	3.24340	3.74532	4.32194	5.74349	7.612253
31	2.50008	2.90503	3.37313	3.91386	4.53804	6.08810	8.145110
32	2.57508	3.00671	3.50806	4.08998	4.76494	6.45339	8.715268
33	2.65233	3.11194	3.64838	4.27403	5.00319	6.84059	9.325337
34	2.73190	3.22086	3.79432	4.46636	5.25335	7.25102	9.979110
35	2.81386	3.33359	3.94609	4.66735	5.51601	7.68609	10.676578
36	2.89828	3.45027	4.10393	4.87738	5.79182	8.14725	11.423939
37	2.98523	3.57102	4.26809	5.09686	6.08141	8.63609	12.223614
38	3.07478	3.69601	4.43881	5.32622	6.38548	9.15425	13.079277
39	3.16703	3.82537	4.61637	5.56590	6.70475	9.70351	13.994827
40	3.26204	3.95926	4.80102	5.81636	7.03999	10.28572	14.974465

SHOWING THE TIME IN WHICH A SUM WILL DOUBLE ITSELF, WHEN LENT AT THE FOLLOWING RATES OF INTEREST.

Rate per cent.	Time in which a Sum will double.		Rate per cent.	Time in which a Sum will double.	
	Simple Interest.	Compound Int.		Simple Interest.	Compound Int.
2	50 years.	35 years 1 day.	5	20 years.	14 years 75 days.
2 1-2	40 years.	28 years 26 days.	6	16 years 8 months.	11 years 327 days.
3	33 years 4 months.	23 years 164 days.	7	14 years 104 days.	10 years 89 days.
3 1-2	28 years 208 days.	20 years 54 days.	8	12 1-2 years.	9 years 2 days.
4	25 years.	17 years 246 days.	9	11 years 40 days.	8 years 16 days.
4 1-2	22 years 81 days.	15 years 273 days.	10	10 years.	7 years 100 days.

PRODUCE AND MERCHANDISE READY RECKONERS

HAY, BUTTER, CHEESE, LARD, AND OTHER PRODUCE.

READY RECKONER, to find the Price of any Number of Pounds, at the Rate of 2000 pounds to the Ton.

Lbs.	cts 25	cts 50	cts 75	\$ ct 1-00	\$ ct 2-00	\$ ct 3-00	\$ ct 4-00	\$ ct 5-00	\$ ct 6-00	\$ ct 7-00	\$ ct 8-00	\$ ct 9-00	\$ ct 10-00	\$ ct 11-00	\$ ct 12-00
3	..	..	..	..	..	..	1	1	1	1	1	1	2	2	2
7	..	..	..	..	1	1	1	2	2	2	3	3	4	4	4
10	..	..	..	1	1	2	2	3	3	4	4	5	5	6	6
20	..	1	1	1	2	3	4	5	6	7	8	9	10	11	12
30	..	1	1	1	2	3	5	6	8	9	11	12	14	15	18
40	1	1	2	2	2	4	6	8	10	12	14	16	18	20	24
50	1	1	2	3	3	5	8	10	13	15	18	20	23	25	30
60	1	2	2	3	3	6	9	12	15	18	21	24	27	30	36
70	1	2	3	4	4	7	11	14	18	21	25	28	32	35	42
80	1	2	3	4	4	8	12	16	20	24	28	32	36	40	48
90	1	2	3	5	5	9	14	18	23	27	32	36	41	45	54
100	1	3	4	5	10	15	20	25	30	35	40	45	50	55	60
200	3	5	8	10	20	30	40	50	60	70	80	90	100	110	120
300	4	8	11	15	30	45	60	75	90	105	120	135	150	165	180
400	5	10	15	20	40	60	80	100	120	140	160	180	200	220	240
500	6	13	19	25	50	75	100	125	150	175	200	225	250	275	300
600	8	15	23	30	60	90	120	150	180	210	240	270	300	330	360
700	9	18	26	35	70	105	140	175	210	245	280	315	350	385	420
800	10	20	30	40	80	120	160	200	240	280	320	360	400	440	480
900	11	23	34	45	90	135	180	225	270	315	360	405	450	495	540
1000	13	25	38	50	100	150	200	250	300	350	400	450	500	550	600
1100	14	28	41	55	110	165	220	275	330	385	440	495	550	605	660
1200	15	30	45	60	120	180	240	300	360	420	480	540	600	660	720
1300	16	33	49	65	130	195	260	325	390	455	520	585	650	715	780
1400	18	35	53	70	140	210	280	350	420	490	560	630	700	770	840
1500	19	38	56	75	150	225	300	375	450	525	600	675	750	825	900
1600	20	40	60	80	160	240	320	400	480	560	640	720	800	880	960
1700	21	43	64	85	170	255	340	425	510	595	680	765	850	935	1020
1800	23	45	68	90	180	270	360	450	540	630	720	810	900	990	1080
1900	24	48	71	95	190	285	380	475	570	665	760	855	950	1045	1140

Lbs.	\$ cts 13-00	\$ cts 14-00	\$ cts 15-00	\$ cts 16-00	\$ cts 17-00	\$ cts 18-00	\$ cts 19-00	\$ cts 20-00	\$ cts 25-00	\$ cts 30-00	\$ cts 40-00	\$ cts 50-00
3	2	2	2	2	3	3	3	3	4	5	6	8
7	5	5	5	6	6	6	7	7	9	11	14	18
10	7	7	8	8	9	9	10	10	13	15	20	25
20	13	14	15	16	17	18	19	20	25	30	40	50
30	20	21	23	24	26	27	29	30	38	45	60	75
40	26	28	30	32	34	36	38	40	50	60	80	100
50	33	35	38	40	43	45	48	50	63	75	100	125
60	39	42	45	48	51	54	57	60	75	90	120	150
70	46	49	53	56	60	63	67	70	88	105	140	175
80	52	56	60	64	68	72	76	80	100	120	160	200
90	59	63	68	72	77	81	86	90	113	135	180	225
100	65	70	75	80	85	90	95	100	125	150	200	250
200	130	140	150	160	170	180	190	200	250	300	400	500
300	195	210	225	240	255	270	285	300	375	450	600	750
400	260	280	300	320	340	360	380	400	500	600	800	1000
500	325	350	375	400	425	450	475	500	625	750	1000	1250
600	390	420	450	480	510	540	570	600	750	900	1200	1500
700	455	490	525	560	595	630	665	700	875	1050	1400	1750
800	520	560	600	640	680	720	760	800	1000	1200	1600	2000
900	585	630	675	720	765	810	855	900	1125	1350	1800	2250
1000	650	700	750	800	850	900	950	1000	1250	1500	2000	2500
1100	715	770	825	880	935	990	1045	1100	1375	1650	2200	2750
1200	780	840	900	960	1020	1080	1140	1200	1500	1800	2400	3000
1300	845	910	975	1040	1105	1170	1235	1300	1625	1950	2600	3250
1400	910	980	1050	1120	1190	1260	1330	1400	1750	2100	2800	3500
1500	975	1050	1125	1200	1275	1350	1425	1500	1875	2250	3000	3750
1600	1040	1120	1200	1280	1360	1440	1520	1600	2000	2400	3200	4000
1700	1105	1190	1275	1360	1445	1530	1615	1700	2125	2550	3400	4250
1800	1170	1260	1350	1440	1530	1620	1710	1800	2250	2700	3600	4500
1900	1235	1330	1425	1520	1615	1710	1805	1900	2375	2850	3800	4750

If the No. required is not in the Tables, add the amounts of two numbers together.

READY RECKONER, to find the Price of any Number of Pounds, at the Rate of 2240 pounds to the Ton.

Lbs.	cts 25	cts 50	cts 75	\$ ct 1-00	\$ ct 2-00	\$ ct 3-00	\$ ct 4-00	\$ ct 5-00	\$ ct 6-00	\$ ct 7-00	\$ ct 8-00	\$ ct 9-00	\$ ct 10-00	\$ ct 11-00	\$ ct 12-00
10	..	..	..	..	..	1	2	2	3	3	4	4	4	5	5
15	..	..	..	..	1	2	3	3	4	5	5	6	7	7	8
20	..	..	..	..	2	3	4	4	5	6	7	8	9	10	11
25	..	..	..	1	2	3	4	5	7	8	9	10	11	12	13
30	..	..	1	1	3	4	5	7	8	9	11	12	13	15	16
40	..	..	1	2	4	5	7	9	11	13	14	16	18	20	21
50	..	1	2	2	4	6	9	11	13	16	18	20	22	25	27
60	..	1	2	3	5	8	11	13	16	19	21	24	27	29	32
70	..	2	2	3	6	9	12	15	19	22	25	28	31	34	37
80	..	2	3	4	7	11	14	18	21	25	29	32	36	39	43
90	..	2	3	4	8	12	16	20	24	28	32	36	40	44	48
100	1	2	3	4	9	13	18	22	27	31	36	40	45	49	54
200	2	4	6	9	18	27	36	45	54	63	71	80	89	98	107
300	3	7	10	13	27	40	54	67	80	94	107	121	134	147	161
400	4	9	13	18	36	54	71	89	107	125	143	161	179	196	214
500	6	11	17	22	45	67	89	112	134	156	179	201	223	246	268
600	7	13	20	27	54	80	107	134	161	188	214	241	268	295	321
700	8	16	23	31	63	94	125	156	187	219	250	281	312	344	375
800	9	18	27	36	71	107	143	179	214	250	286	321	357	393	429
900	10	20	30	40	80	121	161	201	241	281	321	362	402	442	482
1000	11	22	33	45	89	134	179	223	268	313	357	402	446	491	536
1100	12	25	37	49	98	147	196	246	295	344	393	442	491	540	589
1200	13	27	40	54	107	161	214	268	321	375	429	482	536	589	643
1300	14	29	44	58	116	174	232	290	348	406	464	522	580	639	696
1400	16	31	47	62	125	187	250	312	375	438	500	562	625	687	750
1500	17	33	50	67	134	201	268	335	402	469	536	603	670	737	804
1600	18	36	54	71	143	214	286	357	428	500	571	643	714	786	857
1700	19	38	57	76	152	228	303	379	456	531	607	683	759	835	911
1800	20	40	60	80	161	241	321	402	482	563	643	723	804	884	964
1900	21	42	64	85	170	254	339	424	509	594	678	763	848	933	1018
2000	22	45	67	89	178	268	357	446	536	625	714	803	893	982	1071
2100	23	47	70	94	187	281	375	469	562	656	750	844	937	1031	1125

Lbs.	\$ cts 13-00	\$ cts 14-00	\$ cts 15-00	\$ cts 16-00	\$ cts 17-00	\$ cts 18-00	\$ cts 19-00	\$ cts 20-00	\$ cts 21-00	\$ cts 22-00	\$ cts 23-00	\$ cts 24-00
10	6	6	7	7	8	8	8	9	9	10	10	11
15	9	9	10	11	11	12	13	13	14	15	15	16
20	12	13	13	14	15	16	17	18	19	20	21	21
25	15	16	17	18	19	20	21	22	23	25	26	27
30	17	19	20	21	23	24	25	27	28	29	31	32
40	23	25	27	29	30	32	34	36	38	39	41	43
50	29	31	33	36	38	40	42	45	47	49	51	54
60	35	38	40	43	46	48	51	54	56	59	62	64
70	41	44	47	50	53	56	59	62	66	69	72	75
80	46	50	54	57	61	64	68	71	75	79	82	86
90	52	56	60	64	68	72	76	80	84	88	92	96
100	58	63	67	71	76	80	85	89	94	98	103	107
200	1-16	1-25	1-34	1-42	1-52	1-61	1-70	1-79	1-88	1-96	2-05	2-14
300	1-74	1-88	2-01	2-14	2-28	2-41	2-54	2-68	2-81	2-95	3-08	3-21
400	2-32	2-50	2-69	2-86	3-04	3-21	3-39	3-57	3-75	3-93	4-11	4-29
500	2-90	3-13	3-35	3-57	3-79	4-02	4-24	4-46	4-69	4-91	5-13	5-36
600	3-48	3-75	4-02	4-29	4-55	4-82	5-09	5-36	5-63	5-89	6-16	6-43
700	4-06	4-38	4-69	5-00	5-31	5-62	5-94	6-25	6-56	6-87	7-19	7-50
800	4-64	5-00	5-36	5-71	6-07	6-43	6-79	7-14	7-50	7-86	8-21	8-57
900	5-22	5-63	6-03	6-43	6-83	7-23	7-63	8-04	8-44	8-84	9-24	9-64
1000	5-80	6-25	6-70	7-14	7-59	8-04	8-48	8-93	9-38	9-82	10-27	10-71
1100	6-38	6-88	7-37	7-86	8-35	8-84	9-33	9-82	10-31	10-80	11-29	11-79
1200	6-96	7-50	8-04	8-57	9-11	9-64	10-18	10-71	11-25	11-79	12-32	12-86
1300	7-54	8-13	8-70	9-28	9-87	10-45	11-03	11-61	12-19	12-77	13-35	13-93
1400	8-12	8-75	9-37	10-00	10-62	11-25	11-87	12-50	13-13	13-75	14-37	15-00
1500	8-70	9-38	10-04	10-71	11-38	12-05	12-72	13-39	14-06	14-73	15-40	16-07
1600	9-28	10-00	10-71	11-43	12-14	12-86	13-57	14-28	15-00	15-71	16-43	17-14
1700	9-86	10-63	11-35	12-14	12-90	13-66	14-42	15-18	15-94	16-70	17-45	18-21
1800	10-44	11-25	12-05	12-86	13-66	14-46	15-27	16-07	16-88	17-68	18-48	19-29
1900	11-03	11-88	12-72	13-57	14-42	15-27	16-12	16-96	17-81	18-66	19-51	20-36
2000	11-61	12-50	13-39	14-28	15-18	16-07	16-96	17-86	18-75	19-64	20-53	21-43
2100	12-19	13-13	14-06	15-00	15-94	16-87	17-81	18-75	19-69	20-62	21-56	22-50

116 READY RECKONER, 2240 LBS. TO THE TON.

If the article cost \$12.50 per ton, add the amounts under \$12. and 50 cents together.

Lbs.	\$ cts										\$ cts									
	25-00	26-00	27-00	28-00	29-00	30-00	31-00	32-00	33-00	34-00	35-00	36-00	37-00	38-00	39-00	40-00	41-00	42-00	43-00	44-00
10	11	12	12	13	13	13	14	14	15	15	16	16								
15	17	17	18	19	19	20	21	21	22	23	23	24								
20	22	23	24	25	26	27	28	29	29	30	31	32								
25	28	29	30	31	32	33	35	36	37	38	39	40								
30	33	35	36	38	39	40	41	43	44	46	47	48								
40	45	46	48	50	52	54	55	57	59	61	63	64								
50	56	58	60	63	65	67	69	71	74	76	78	80								
60	67	70	72	75	78	80	83	86	88	91	94	96								
70	78	81	84	88	91	94	97	100	103	106	109	112								
80	89	93	96	100	104	107	111	114	118	121	125	129								
90	100	104	108	113	116	121	125	129	133	137	141	145								
100	112	116	121	125	129	134	138	143	147	152	156	161								
200	223	232	241	250	259	268	277	286	294	304	312	321								
300	335	348	362	375	388	402	415	429	441	455	469	482								
400	446	464	482	500	519	536	554	571	589	607	625	643								
500	558	580	603	625	647	670	692	714	737	759	781	804								
600	670	696	723	750	777	804	830	857	884	911	938	964								
700	781	812	844	875	906	937	969	1000	1031	1062	1094	1125								
800	893	929	964	1000	1036	1071	1107	1143	1179	1214	1250	1286								
900	1004	1045	1085	1125	1165	1205	1246	1286	1326	1366	1406	1446								
1000	1116	1161	1205	1250	1295	1339	1384	1429	1473	1518	1563	1607								
1100	1228	1277	1326	1375	1424	1473	1522	1571	1621	1670	1719	1768								
1200	1339	1393	1446	1500	1554	1607	1661	1714	1768	1821	1875	1929								
1300	1451	1509	1567	1625	1683	1741	1799	1857	1915	1973	2031	2089								
1400	1562	1625	1687	1750	1812	1875	1937	2000	2062	2125	2188	2250								
1500	1674	1741	1808	1875	1942	2009	2076	2143	2210	2277	2344	2411								
1600	1786	1857	1928	2000	2071	2143	2214	2286	2357	2428	2500	2571								
1700	1897	1973	2049	2125	2200	2277	2353	2428	2504	2580	2656	2732								
1800	2009	2089	2170	2250	2330	2411	2491	2571	2652	2732	2813	2893								
1900	2120	2205	2290	2375	2460	2544	2629	2714	2799	2884	2969	3053								
2000	2232	2321	2410	2500	2589	2678	2767	2857	2946	3036	3125	3214								
2100	2344	2437	2531	2625	2719	2812	2906	3000	3093	3187	3281	3375								

Lbs.	\$ cts										\$ cts									
	37-00	38-00	39-00	40-00	41-00	42-00	43-00	44-00	45-00	50-00	55-00	60-00								
10	17	17	17	18	18	19	19	20	20	22	25	27								
15	25	25	26	27	27	28	29	29	30	33	37	40								
20	33	34	35	36	37	38	38	39	40	45	49	54								
25	41	42	44	45	46	47	48	49	50	56	61	67								
30	50	51	52	54	55	56	57	59	60	67	74	80								
40	66	68	70	71	73	75	77	79	80	89	98	107								
50	83	85	87	89	92	94	96	98	100	112	123	134								
60	99	102	104	107	110	113	115	118	120	134	147	161								
70	116	119	121	125	128	131	134	137	141	156	172	187								
80	132	136	139	143	146	150	154	157	161	179	196	214								
90	149	153	157	161	165	169	173	177	181	201	221	241								
100	165	170	174	179	183	188	192	196	201	223	246	268								
200	330	339	348	357	366	375	384	393	402	446	491	536								
300	496	509	522	536	549	563	576	589	603	670	737	804								
400	661	679	696	714	732	750	768	786	804	893	982	1071								
500	826	848	871	893	915	938	960	982	1004	1116	1228	1339								
600	991	1018	1045	1071	1098	1125	1152	1179	1205	1339	1473	1607								
700	1156	1187	1219	1250	1281	1313	1344	1375	1406	1562	1719	1875								
800	1321	1357	1393	1429	1464	1500	1536	1571	1607	1786	1964	2143								
900	1487	1527	1567	1607	1647	1688	1728	1768	1808	2009	2210	2411								
1000	1652	1696	1741	1786	1830	1875	1920	1964	2009	2232	2455	2679								
1100	1817	1866	1915	1964	2013	2063	2112	2161	2210	2455	2701	2946								
1200	1982	2036	2089	2143	2196	2250	2304	2357	2411	2679	2946	3214								
1300	2147	2205	2263	2321	2379	2438	2495	2553	2612	2902	3192	3482								
1400	2312	2375	2437	2500	2562	2625	2687	2750	2812	3125	3437	3750								
1500	2478	2545	2612	2679	2745	2813	2879	2946	3013	3348	3683	4016								
1600	2643	2714	2786	2857	2928	3000	3071	3143	3214	3571	3928	4285								
1700	2808	2884	2960	3036	3112	3188	3263	3339	3415	3795	4174	4553								
1800	2973	3054	3134	3214	3295	3375	3455	3536	3616	4018	4420	4821								
1900	3138	3223	3308	3393	3478	3563	3647	3732	3817	4241	4665	5089								
2000	3303	3393	3482	3571	3661	3750	3839	3928	4018	4464	4911	5357								
2100	3468	3563	3656	3750	3844	3938	4031	4125	4219	4687	5156	5625								

READY RECKONER, to find the Price of any Number of Pounds, at the Rate of 2240 Pounds to the Ton. — [Continued.]

READY RECKONER, to find the Price of any Number of Pounds, Yards, Pieces, or Bushels, from 2 cents to \$3.00.

The first column contains the NUMBER, the top columns the PRICES.

Nos	2 ct.	3 ct.	4 ct.	5 ct.	6 ct.	6 1/2 ct.	7 ct.	8 ct.	9 ct.	10 ct.	11 ct.	12 ct.	12 1/2 ct.	13 ct.	14 ct.
2	4	6	8	10	12	12 1/2	14	16	18	20	22	24	25	26	28
3	6	9	12	15	18	18 3/4	21	24	27	30	33	36	37 1/2	39	42
4	8	12	16	20	24	25	28	32	36	40	44	48	50	52	56
5	10	15	20	25	30	31 1/4	35	40	45	50	55	60	62 1/2	65	70
6	12	18	24	30	36	37 1/2	42	48	54	60	66	72	75	78	84
7	14	21	28	35	42	43 3/4	49	56	63	70	77	84	87 1/2	91	98
8	16	24	32	40	48	50	56	64	72	80	88	96	1 00	1 04	1 12
9	18	27	36	45	54	56 1/4	63	72	81	90	99	1 08	1 12 1/2	1 17	1 26
10	20	30	40	50	60	62 1/2	70	80	90	1 00	1 10	1 20	1 25	1 30	1 40
11	22	33	44	55	66	68 3/4	77	88	99	1 10	1 21	1 32	1 37 1/2	1 43	1 54
12	24	36	48	60	72	75	84	96	1 08	1 20	1 32	1 44	1 50	1 56	1 68
13	26	39	52	65	78	81 1/4	91	1 04	1 17	1 30	1 43	1 56	1 62 1/2	1 69	1 82
14	28	42	56	70	84	87 1/2	98	1 12	1 26	1 40	1 54	1 68	1 75	1 82	1 96
15	30	45	60	75	90	93 3/4	1 05	1 20	1 35	1 50	1 65	1 80	1 87 1/2	1 95	2 10
16	32	48	64	80	96	1 00	1 12	1 28	1 44	1 60	1 76	1 92	2 00	2 08	2 24
17	34	51	68	85	1 02	1 06 1/4	1 19	1 36	1 53	1 70	1 87	2 04	2 12 1/2	2 21	2 38
18	36	54	72	90	1 08	1 12 1/2	1 26	1 44	1 62	1 80	1 98	2 16	2 25	2 34	2 52
19	38	57	76	95	1 14	1 18 1/4	1 33	1 52	1 71	1 90	2 09	2 28	2 37 1/2	2 47	2 66
20	40	60	80	1 00	1 20	1 25	1 40	1 60	1 80	2 00	2 20	2 40	2 50	2 60	2 80
21	42	63	84	1 05	1 26	1 31 1/4	1 47	1 68	1 89	2 10	2 31	2 52	2 62 1/2	2 73	2 94
22	44	66	88	1 10	1 32	1 37 1/2	1 54	1 76	1 98	2 20	2 42	2 64	2 75	2 86	3 08
23	46	69	92	1 15	1 38	1 43 1/4	1 61	1 84	2 07	2 30	2 53	2 76	2 87 1/2	2 99	3 22
24	48	72	96	1 20	1 44	1 50	1 68	1 92	2 16	2 40	2 64	2 88	3 00	3 12	3 36
25	50	75	1 00	1 25	1 50	1 56 1/4	1 75	2 00	2 25	2 50	2 75	3 00	3 12 1/2	3 25	3 50
30	60	90	1 20	1 50	1 80	1 87 1/2	2 10	2 40	2 70	3 00	3 30	3 60	3 75	3 90	4 20
40	80	1 20	1 60	2 00	2 40	2 50	2 80	3 20	3 60	4 00	4 40	4 80	5 00	5 20	5 60
50	1 00	1 50	2 00	2 50	3 00	3 12 1/2	3 50	4 00	4 50	5 00	5 50	6 00	6 25	6 50	7 00
60	1 20	1 80	2 40	3 00	3 60	3 75	4 20	4 80	5 40	6 00	6 60	7 20	7 50	7 80	8 40
70	1 40	2 10	2 80	3 50	4 20	4 37 1/2	4 90	5 60	6 30	7 00	7 70	8 40	8 75	9 10	9 80
80	1 60	2 40	3 20	4 00	4 80	5 00	5 60	6 40	7 20	8 00	8 80	9 60	10 00	10 40	11 20
90	1 80	2 70	3 60	4 50	5 40	5 62 1/2	6 30	7 20	8 10	9 00	9 90	10 80	11 25	11 70	12 60
100	2 00	3 00	4 00	5 00	6 00	6 25	7 00	8 00	9 00	10 00	11 00	12 00	12 50	13 00	14 00

Nos	15 ct.	16 ct.	17 ct.	18 ct.	18 1/2 ct.	19 ct.	20 ct.	21 ct.	22 ct.	23 ct.	24 ct.	25 ct.	26 ct.	27 ct.
2	30	32	34	36	37 1/2	38	40	42	44	46	48	50	52	54
3	45	48	51	54	56 1/4	57	60	63	66	69	72	75	78	81
4	60	64	68	72	75	76	80	84	88	92	96	1 00	1 04	1 08
5	75	80	85	90	93 3/4	95	1 00	1 05	1 10	1 15	1 20	1 25	1 30	1 35
6	90	96	1 02	1 08	1 12 1/2	1 14	1 20	1 26	1 32	1 38	1 44	1 50	1 56	1 62
7	1 05	1 12	1 19	1 26	1 31 1/4	1 33	1 40	1 47	1 54	1 61	1 68	1 75	1 82	1 89
8	1 20	1 28	1 36	1 44	1 50	1 52	1 60	1 68	1 76	1 84	1 92	2 00	2 08	2 16
9	1 35	1 44	1 53	1 62	1 68 1/4	1 71	1 80	1 89	1 98	2 07	2 16	2 25	2 34	2 43
10	1 50	1 60	1 70	1 80	1 87 1/2	1 90	2 00	2 10	2 20	2 30	2 40	2 50	2 60	2 70
11	1 65	1 76	1 87	1 98	2 06 1/4	2 09	2 20	2 31	2 42	2 53	2 64	2 75	2 86	2 97
12	1 80	1 92	2 04	2 16	2 25	2 28	2 40	2 52	2 64	2 76	2 88	3 00	3 12	3 24
13	1 95	2 08	2 21	2 34	2 43 1/2	2 47	2 60	2 73	2 86	2 99	3 12	3 25	3 38	3 51
14	2 10	2 24	2 38	2 52	2 62 1/2	2 66	2 80	2 94	3 08	3 22	3 36	3 50	3 64	3 78
15	2 25	2 40	2 55	2 70	2 81 1/4	2 85	3 00	3 15	3 30	3 45	3 60	3 75	3 90	4 05
16	2 40	2 56	2 72	2 88	3 00	3 04	3 20	3 36	3 52	3 68	3 84	4 00	4 16	4 32
17	2 55	2 82	2 89	3 06	3 18 1/2	3 23	3 40	3 57	3 74	3 91	4 08	4 25	4 42	4 59
18	2 70	2 88	3 06	3 24	3 37 1/2	3 42	3 60	3 78	3 96	4 14	4 32	4 50	4 68	4 86
19	2 85	3 04	3 23	3 42	3 56 1/4	3 61	3 80	3 99	4 18	4 37	4 56	4 75	4 94	5 13
20	3 00	3 20	3 40	3 60	3 75	3 80	4 00	4 20	4 40	4 60	4 80	5 00	5 20	5 40
21	3 15	3 36	3 57	3 78	3 93 1/2	3 99	4 20	4 41	4 62	4 83	5 04	5 25	5 46	5 67
22	3 30	3 52	3 74	3 96	4 12 1/2	4 18	4 40	4 62	4 84	5 06	5 28	5 50	5 72	5 94
23	3 45	3 68	3 91	4 14	4 31 1/4	4 37	4 60	4 83	5 06	5 29	5 52	5 75	5 99	6 21
24	3 60	3 84	4 08	4 32	4 50	4 56	4 80	5 04	5 28	5 52	5 76	6 00	6 24	6 48
25	3 75	4 00	4 25	4 50	4 68 1/2	4 75	5 00	5 25	5 50	5 75	6 00	6 25	6 50	6 75
30	4 50	4 80	5 10	5 40	5 62 1/2	5 70	6 00	6 30	6 60	6 90	7 20	7 50	7 80	8 10
40	6 00	6 40	6 80	7 20	7 50	7 60	8 00	8 40	8 80	9 20	9 60	10 00	10 40	10 80
50	7 50	8 00	8 50	9 00	9 37 1/2	9 50	10 00	10 50	11 00	11 50	12 00	12 50	13 00	13 50
60	9 00	9 60	10 20	10 80	11 25	11 40	12 00	12 60	13 20	13 80	14 40	15 00	15 60	16 20
70	10 50	11 20	11 90	12 60	13 12 1/2	13 30	14 00	14 70	15 40	16 10	16 80	17 50	18 20	18 90
80	12 00	12 80	13 60	14 40	15 00	15 20	16 00	16 80	17 60	18 40	19 20	20 00	20 50	21 60
90	13 50	14 40	15 30	16 20	16 87 1/2	17 10	18 00	18 90	19 80	20 70	21 60	22 50	23 40	24 30
100	15 00	16 00	17 00	18 00	18 75	19 00	20 00	21 00	22 00	23 00	24 00	25 00	26 00	27 00

The first column on the left contains the NUMBER of the Article, and the column on the tops of the Tables, the PRICE.

Nos	23 ct.	29 ct.	30 ct.	31 ct.	31½ ct.	32 ct.	33 ct.	33½ ct.	34 ct.	35 ct.	36 ct.	37 ct.	37½ ct.
2	.56	.58	.60	.62	.62½	.64	.66	.66½	.68	.70	.72	.74	.75
3	.84	.87	.90	.93	.93½	.96	.99	1.00	1.02	1.05	1.08	1.11	1.12½
4	1.12	1.16	1.20	1.24	1.25	1.28	1.32	1.33½	1.36	1.40	1.44	1.48	1.50
5	1.40	1.45	1.50	1.55	1.56½	1.60	1.65	1.66½	1.70	1.75	1.80	1.85	1.87½
6	1.68	1.74	1.80	1.86	1.87½	1.92	1.98	2.00	2.04	2.10	2.16	2.22	2.25
7	1.96	2.03	2.10	2.17	2.18	2.24	2.31	2.33½	2.38	2.45	2.52	2.59	2.62½
8	2.24	2.32	2.40	2.48	2.50	2.56	2.64	2.66½	2.72	2.80	2.88	2.96	3.00
9	2.52	2.61	2.70	2.79	2.81½	2.88	2.97	3.00	3.06	3.15	3.24	3.33	3.37½
10	2.80	2.90	3.00	3.10	3.12½	3.20	3.30	3.33½	3.40	3.50	3.60	3.70	3.75
11	3.08	3.19	3.30	3.41	3.43½	3.52	3.63	3.66½	3.74	3.85	3.96	4.07	4.12½
12	3.36	3.48	3.60	3.72	3.75	3.84	3.96	4.00	4.08	4.20	4.32	4.44	4.50
13	3.64	3.77	3.90	4.03	4.06½	4.16	4.29	4.33½	4.42	4.55	4.68	4.81	4.87½
14	3.92	4.06	4.20	4.34	4.37½	4.48	4.62	4.66½	4.76	4.90	5.04	5.18	5.25
15	4.20	4.35	4.50	4.65	4.68½	4.80	4.95	5.00	5.10	5.25	5.40	5.55	5.62½
16	4.48	4.64	4.80	4.96	5.00	5.12	5.28	5.33½	5.44	5.60	5.76	5.92	6.00
17	4.76	4.93	5.10	5.27	5.31½	5.44	5.61	5.66½	5.78	5.95	6.12	6.29	6.37½
18	5.04	5.22	5.40	5.58	5.62½	5.76	5.94	6.00	6.12	6.30	6.48	6.66	6.75
19	5.32	5.51	5.70	5.89	5.93½	6.08	6.27	6.33½	6.46	6.65	6.84	7.03	7.12½
20	5.60	5.80	6.00	6.20	6.25	6.40	6.60	6.66½	6.80	7.00	7.20	7.40	7.50
21	5.88	6.09	6.30	6.51	6.56½	6.72	6.93	7.00	7.14	7.35	7.56	7.77	7.87½
22	6.16	6.38	6.60	6.82	6.87½	7.04	7.26	7.33½	7.48	7.70	7.92	8.14	8.25
23	6.44	6.67	6.90	7.13	7.18½	7.36	7.59	7.66½	7.82	8.05	8.28	8.51	8.62½
24	6.72	6.96	7.20	7.44	7.50	7.68	7.92	8.00	8.16	8.40	8.64	8.88	9.00
25	7.00	7.25	7.50	7.75	7.81½	8.00	8.25	8.33½	8.50	8.75	9.00	9.25	9.37½
30	8.40	8.70	9.00	9.30	9.37½	9.60	9.90	10.00	10.20	10.50	10.80	11.10	11.25
40	11.20	11.60	12.00	12.40	12.50	12.80	13.20	13.33½	13.60	14.00	14.40	14.80	15.00
50	14.00	14.50	15.00	15.50	15.62½	16.00	16.50	16.66½	17.00	17.50	18.00	18.50	18.75
60	16.80	17.40	18.00	18.60	18.75	19.20	19.80	20.00	20.40	21.00	21.60	22.20	22.50
70	19.60	20.30	21.00	21.70	21.87½	22.40	23.10	23.33½	23.80	24.50	25.20	25.90	26.25
80	22.40	23.20	24.00	24.80	25.00	25.60	26.40	26.66½	27.20	28.00	28.80	29.60	30.00
90	25.20	26.10	27.00	27.90	28.12½	28.80	29.70	30.00	30.60	31.50	32.40	33.30	33.75
100	28.00	29.00	30.00	31.00	31.25	32.00	33.00	33.33½	34.00	35.00	36.00	37.00	37.50

Nos	38 ct.	39 ct.	40 ct.	41 ct.	42 ct.	43 ct.	44 ct.	45 ct.	46 ct.	47 ct.	48 ct.	49 ct.	50 ct.	51 ct.
2	.76	.78	.80	.82	.84	.86	.88	.90	.92	.94	.96	.98	1.00	1.02
3	1.14	1.17	1.20	1.23	1.26	1.29	1.32	1.35	1.38	1.41	1.44	1.47	1.50	1.53
4	1.52	1.56	1.60	1.64	1.68	1.72	1.76	1.80	1.84	1.88	1.92	1.96	2.00	2.04
5	1.90	1.95	2.00	2.05	2.10	2.15	2.20	2.25	2.30	2.35	2.40	2.45	2.50	2.55
6	2.28	2.34	2.40	2.46	2.52	2.58	2.64	2.70	2.76	2.82	2.88	2.94	3.00	3.06
7	2.66	2.73	2.80	2.87	2.94	3.01	3.08	3.15	3.22	3.29	3.36	3.43	3.50	3.57
8	3.04	3.12	3.20	3.28	3.36	3.44	3.52	3.60	3.68	3.76	3.84	3.92	4.00	4.09
9	3.42	3.51	3.60	3.69	3.78	3.87	3.96	4.05	4.14	4.23	4.32	4.41	4.50	4.59
10	3.80	3.90	4.00	4.10	4.20	4.30	4.40	4.50	4.60	4.70	4.80	4.90	5.00	5.10
11	4.18	4.29	4.40	4.51	4.62	4.73	4.84	4.95	5.06	5.17	5.28	5.39	5.50	5.61
12	4.56	4.68	4.80	4.92	5.04	5.16	5.28	5.40	5.52	5.64	5.76	5.88	6.00	6.12
13	4.94	5.07	5.20	5.33	5.46	5.59	5.72	5.85	5.98	6.11	6.24	6.37	6.50	6.63
14	5.32	5.46	5.60	5.74	5.88	6.02	6.16	6.30	6.44	6.58	6.72	6.86	7.00	7.14
15	5.70	5.85	6.00	6.15	6.30	6.45	6.60	6.75	6.90	7.05	7.20	7.35	7.50	7.65
16	6.08	6.24	6.40	6.56	6.72	6.88	7.04	7.20	7.36	7.52	7.68	7.84	8.00	8.16
17	6.46	6.63	6.80	6.97	7.14	7.31	7.48	7.65	7.82	7.99	8.16	8.33	8.50	8.67
18	6.84	7.02	7.20	7.38	7.56	7.74	7.92	8.10	8.28	8.46	8.64	8.82	9.00	9.18
19	7.22	7.41	7.60	7.79	7.98	8.17	8.36	8.55	8.74	8.93	9.12	9.31	9.50	9.69
20	7.60	7.80	8.00	8.20	8.40	8.60	8.80	9.00	9.20	9.40	9.60	9.80	10.00	10.20
21	7.98	8.19	8.40	8.61	8.82	9.03	9.24	9.45	9.66	9.87	10.08	10.29	10.50	10.71
22	8.36	8.58	8.80	9.02	9.24	9.46	9.68	9.90	10.12	10.34	10.56	10.78	11.00	11.22
23	8.74	8.97	9.20	9.43	9.66	9.89	10.12	10.35	10.58	10.81	11.04	11.27	11.50	11.73
24	9.12	9.36	9.60	9.84	10.08	10.32	10.56	10.80	11.04	11.28	11.52	11.76	12.00	12.24
25	9.50	9.75	10.00	10.25	10.50	10.75	11.00	11.25	11.50	11.75	12.00	12.25	12.50	12.75
30	11.40	11.70	12.00	12.30	12.60	12.90	13.20	13.50	13.80	14.10	14.40	14.70	15.00	15.30
40	15.20	15.60	16.00	16.40	16.80	17.20	17.60	18.00	18.40	18.80	19.20	19.60	20.00	20.40
50	19.00	19.50	20.00	20.50	21.00	21.50	22.00	22.50	23.00	23.50	24.00	24.50	25.00	25.50
60	22.80	23.40	24.00	24.60	25.20	25.80	26.40	27.00	27.60	28.20	28.80	29.40	30.00	30.60
70	26.60	27.30	28.00	28.70	29.40	30.10	30.80	31.50	32.20	32.90	33.60	34.30	35.00	35.70
80	30.40	31.20	32.00	32.80	33.60	34.40	35.20	36.00	36.80	37.60	38.40	39.20	40.00	40.80
90	34.20	35.10	36.00	36.90	37.80	38.70	39.60	40.50	41.40	42.30	43.20	44.10	45.00	45.90
100	38.00	39.00	40.00	41.00	42.00	43.00	44.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00

The first column on the left contains the NUMBER of the Article, and the column on the tops of the Tables, the PRICE.

Nos	52 ct.	53 ct.	54 ct.	55 ct.	56 ct.	57 ct.	58 ct.	59 ct.	60 ct.	61 ct.	62 ct.	62½ ct.	63 ct.
2	1.04	1.06	1.08	1.10	1.12	1.14	1.16	1.18	1.20	1.22	1.24	1.25	1.26
3	1.56	1.59	1.62	1.65	1.68	1.71	1.74	1.77	1.80	1.83	1.86	1.87½	1.89
4	2.08	2.12	2.16	2.20	2.24	2.28	2.32	2.36	2.40	2.44	2.48	2.50	2.52
5	2.60	2.65	2.70	2.75	2.80	2.85	2.90	2.95	3.00	3.05	3.10	3.12½	3.15
6	3.12	3.18	3.24	3.30	3.36	3.42	3.48	3.54	3.60	3.66	3.72	3.75	3.78
7	3.64	3.71	3.78	3.85	3.92	3.99	4.06	4.13	4.20	4.27	4.34	4.37½	4.41
8	4.16	4.24	4.32	4.40	4.48	4.56	4.64	4.72	4.80	4.88	4.96	5.00	5.04
9	4.68	4.77	4.86	4.95	5.04	5.13	5.22	5.31	5.40	5.49	5.58	5.62½	5.67
10	5.20	5.30	5.40	5.50	5.60	5.70	5.80	5.90	6.00	6.10	6.20	6.25	6.30
11	5.72	5.83	5.94	6.05	6.16	6.27	6.38	6.49	6.60	6.71	6.82	6.87½	6.93
12	6.24	6.36	6.48	6.60	6.72	6.84	6.96	7.08	7.20	7.32	7.44	7.50	7.56
13	6.76	6.89	7.02	7.15	7.28	7.41	7.54	7.67	7.80	7.93	8.06	8.12½	8.19
14	7.28	7.42	7.56	7.70	7.84	7.98	8.12	8.26	8.40	8.54	8.68	8.75	8.82
15	7.80	7.95	8.10	8.25	8.40	8.55	8.70	8.85	9.00	9.15	9.30	9.37½	9.45
16	8.32	8.48	8.64	8.80	8.96	9.12	9.28	9.44	9.60	9.76	9.92	10.00	10.08
17	8.84	9.01	9.18	9.35	9.52	9.69	9.86	10.03	10.20	10.37	10.54	10.62½	10.71
18	9.36	9.54	9.72	9.90	10.08	10.26	10.44	10.62	10.80	10.98	11.16	11.25	11.34
19	9.88	10.07	10.26	10.45	10.64	10.83	11.02	11.21	11.40	11.59	11.78	11.87½	11.97
20	10.40	10.60	10.80	11.00	11.20	11.40	11.60	11.80	12.00	12.20	12.40	12.50	12.60
21	10.92	11.13	11.34	11.55	11.76	11.97	12.18	12.39	12.60	12.81	13.02	13.12½	13.23
22	11.44	11.66	11.88	12.10	12.32	12.54	12.76	12.98	13.20	13.42	13.64	13.75	13.86
23	11.96	12.19	12.42	12.65	12.88	13.11	13.34	13.57	13.80	14.03	14.26	14.37½	14.49
24	12.48	12.72	12.96	13.20	13.44	13.68	13.92	14.16	14.40	14.64	14.88	15.00	15.12
25	13.00	13.25	13.50	13.75	14.00	14.25	14.50	14.75	15.00	15.25	15.50	15.62½	15.75
30	15.60	15.90	16.20	16.50	16.80	17.10	17.40	17.70	18.00	18.30	18.60	18.75	18.90
40	20.80	21.20	21.60	22.00	22.40	22.80	23.20	23.60	24.00	24.40	24.80	25.00	25.20
50	26.00	26.50	27.00	27.50	28.00	28.50	29.00	29.50	30.00	30.50	31.00	31.25	31.50
60	31.20	31.80	32.40	33.00	33.60	34.20	34.80	35.40	36.00	36.60	37.20	37.50	37.80
70	36.40	37.10	37.80	38.50	39.20	39.90	40.60	41.30	42.00	42.70	43.40	43.75	44.10
80	41.60	42.40	43.20	44.00	44.80	45.60	46.40	47.20	48.00	48.80	49.60	50.00	50.40
90	46.80	47.70	48.60	49.50	50.40	51.30	52.20	53.10	54.00	54.90	55.80	56.25	56.70
100	52.00	53.00	54.00	55.00	56.00	57.00	58.00	59.00	60.00	61.00	62.00	62.50	63.00

Nos	64 ct.	65 ct.	66 ct.	66½ ct.	67 ct.	68 ct.	69 ct.	70 ct.	71 ct.	72 ct.	73 ct.	74 ct.	75 ct.
2	1.28	1.30	1.32	1.33½	1.34	1.36	1.38	1.40	1.42	1.44	1.46	1.48	1.50
3	1.92	1.95	1.98	2.00	2.01	2.04	2.07	2.10	2.13	2.16	2.19	2.22	2.25
4	2.56	2.60	2.64	2.66½	2.68	2.72	2.76	2.80	2.84	2.88	2.92	2.96	3.00
5	3.20	3.25	3.30	3.33½	3.35	3.40	3.45	3.50	3.55	3.60	3.65	3.70	3.75
6	3.84	3.90	3.96	4.00	4.02	4.08	4.14	4.20	4.26	4.32	4.38	4.44	4.50
7	4.48	4.55	4.62	4.66½	4.69	4.76	4.83	4.90	4.97	5.04	5.11	5.18	5.25
8	5.12	5.20	5.28	5.33½	5.36	5.44	5.52	5.60	5.68	5.76	5.84	5.92	6.00
9	5.76	5.85	5.94	6.00	6.03	6.12	6.21	6.30	6.39	6.48	6.57	6.66	6.75
10	6.40	6.50	6.60	6.66½	6.70	6.80	6.90	7.00	7.10	7.20	7.30	7.40	7.50
11	7.04	7.15	7.26	7.33½	7.37	7.48	7.59	7.70	7.81	7.92	8.03	8.14	8.25
12	7.68	7.80	7.92	8.00	8.04	8.16	8.28	8.40	8.52	8.64	8.76	8.88	9.00
13	8.32	8.45	8.58	8.66½	8.71	8.84	8.97	9.10	9.23	9.36	9.49	9.62	9.75
14	8.96	9.10	9.24	9.33½	9.38	9.52	9.66	9.80	9.94	10.08	10.22	10.36	10.50
15	9.60	9.75	9.90	10.00	10.05	10.20	10.35	10.50	10.65	10.80	10.95	11.10	11.25
16	10.24	10.40	10.56	10.66½	10.72	10.88	11.04	11.20	11.36	11.52	11.68	11.84	12.00
17	10.88	11.05	11.22	11.33½	11.39	11.56	11.73	11.90	12.07	12.24	12.41	12.58	12.75
18	11.52	11.70	11.88	12.00	12.06	12.24	12.42	12.60	12.78	12.96	13.14	13.32	13.50
19	12.16	12.35	12.54	12.66½	12.73	12.92	13.11	13.30	13.49	13.68	13.87	14.06	14.25
20	12.80	13.00	13.20	13.33½	13.40	13.60	13.80	14.00	14.20	14.40	14.60	14.80	15.00
21	13.44	13.65	13.86	14.00	14.07	14.28	14.49	14.70	14.91	15.12	15.33	15.54	15.75
22	14.08	14.30	14.52	14.66½	14.74	14.96	15.18	15.40	15.62	15.84	16.06	16.28	16.50
23	14.72	14.95	15.18	15.33½	15.41	15.64	15.87	16.10	16.33	16.56	16.79	17.02	17.25
24	15.36	15.60	15.84	16.00	16.08	16.32	16.56	16.80	17.04	17.28	17.52	17.76	18.00
25	16.00	16.25	16.50	16.66½	16.75	17.00	17.25	17.50	17.75	18.00	18.25	18.50	18.75
30	19.20	19.50	19.80	20.00	20.10	20.40	20.70	21.00	21.30	21.60	21.90	22.20	22.50
40	25.60	26.00	26.40	26.66½	26.80	27.20	27.60	28.00	28.40	28.80	29.20	29.60	30.00
50	32.00	32.50	33.00	33.33½	33.50	34.00	34.50	35.00	35.50	36.00	36.50	37.00	37.50
60	38.40	39.00	39.60	40.00	40.20	40.80	41.40	42.00	42.60	43.20	43.80	44.40	45.00
70	44.80	45.50	46.20	46.66½	46.90	47.60	48.30	49.00	49.70	50.40	51.10	51.80	52.50
80	51.20	52.00	52.80	53.33½	53.60	54.40	55.20	56.00	56.80	57.60	58.40	59.20	60.00
90	57.60	58.50	59.40	60.00	60.30	61.20	62.10	63.00	63.90	64.80	65.70	66.60	67.50
100	64.00	65.00	66.00	66.66½	67.00	68.00	69.00	70.00	71.00	72.00	73.00	74.00	75.00

If the Number required is not found in the Tables, add two Numbers together; for instance, if 35 bushels are required, add the prices opposite 30 and 5 together; and so for 365 bushels—treble the value of 100, and add 60 and 5 together.

Nos.	76 ct.	77 ct.	78 ct.	79 ct.	80 ct.	81 ct.	82 ct.	83 ct.	84 ct.	85 ct.	86 ct.	87 ct.	87½ ct.	88 ct.
2	1-52	1-54	1-56	1-58	1-60	1-62	1-64	1-66	1-68	1-70	1-72	1-74	1-75	1-76
3	2-28	2-31	2-34	2-37	2-40	2-43	2-46	2-49	2-52	2-55	2-58	2-61	2-62½	2-64
4	3-04	3-08	3-12	3-16	3-20	3-24	3-28	3-32	3-36	3-40	3-44	3-48	3-50	3-52
5	3-80	3-85	3-90	3-95	4-00	4-05	4-10	4-15	4-20	4-25	4-30	4-35	4-37½	4-40
6	4-56	4-62	4-68	4-74	4-80	4-86	4-92	4-98	5-04	5-10	5-16	5-22	5-25	5-28
7	5-32	5-39	5-46	5-53	5-60	5-67	5-74	5-81	5-88	5-95	6-02	6-09	6-12½	6-16
8	6-08	6-16	6-24	6-32	6-40	6-48	6-56	6-64	6-72	6-80	6-88	6-96	7-00	7-04
9	6-84	6-93	7-02	7-11	7-20	7-29	7-38	7-47	7-56	7-65	7-74	7-83	7-87½	7-92
10	7-60	7-70	7-80	7-90	8-00	8-10	8-20	8-30	8-40	8-50	8-60	8-70	8-75	8-80
11	8-36	8-47	8-58	8-69	8-80	8-91	9-02	9-13	9-24	9-35	9-46	9-57	9-62½	9-68
12	9-12	9-24	9-36	9-48	9-60	9-72	9-84	9-96	10-08	10-20	10-32	10-44	10-50	10-56
13	9-88	10-01	10-14	10-27	10-40	10-53	10-66	10-79	10-92	11-05	11-18	11-31	11-37½	11-44
14	10-64	10-78	10-92	11-06	11-20	11-34	11-48	11-62	11-76	11-90	12-04	12-18	12-25	12-32
15	11-40	11-55	11-70	11-85	12-00	12-15	12-30	12-45	12-60	12-75	12-90	13-05	13-12½	13-20
16	12-16	12-32	12-48	12-64	12-80	12-96	13-12	13-28	13-44	13-60	13-76	13-92	14-00	14-08
17	12-92	13-09	13-26	13-43	13-60	13-77	13-94	14-11	14-28	14-45	14-62	14-79	14-87½	14-96
18	13-68	13-86	14-04	14-22	14-40	14-58	14-76	14-94	15-12	15-30	15-48	15-66	15-75	15-84
19	14-44	14-63	14-82	15-01	15-20	15-39	15-58	15-77	15-96	16-15	16-34	16-53	16-62½	16-72
20	15-20	15-40	15-60	15-80	16-00	16-20	16-40	16-60	16-80	17-00	17-20	17-40	17-50	17-60
21	15-96	16-17	16-38	16-59	16-80	17-01	17-22	17-43	17-64	17-85	18-06	18-27	18-37½	18-48
22	16-72	16-94	17-16	17-38	17-60	17-82	18-04	18-26	18-48	18-70	18-92	19-14	19-25	19-36
23	17-48	17-71	17-94	18-17	18-40	18-63	18-86	19-09	19-32	19-55	19-78	20-01	20-12½	20-24
24	18-24	18-48	18-72	18-96	19-20	19-44	19-68	19-92	20-16	20-40	20-64	20-88	21-00	21-12
25	19-00	19-25	19-50	19-75	20-00	20-25	20-50	20-75	21-00	21-25	21-50	21-75	21-87½	22-00
30	22-80	23-10	23-40	23-70	24-00	24-30	24-60	24-90	25-20	25-50	25-80	26-10	26-25	26-40
40	30-40	30-80	31-20	31-60	32-00	32-40	32-80	33-20	33-60	34-00	34-40	34-80	35-00	35-20
50	38-00	38-50	39-00	39-50	40-00	40-50	41-00	41-50	42-00	42-50	43-00	43-50	44-00	44-00
60	45-60	46-20	46-80	47-40	48-00	48-60	49-20	49-80	50-40	51-00	51-60	52-20	52-50	52-80
70	53-20	53-90	54-60	55-30	56-00	56-70	57-40	58-10	58-80	59-50	60-20	60-90	61-25	61-60
80	60-80	61-60	62-40	63-20	64-00	64-80	65-60	66-40	67-20	68-00	68-80	69-60	70-00	70-40
90	68-40	69-30	70-20	71-10	72-00	72-90	73-80	74-70	75-60	76-50	77-40	78-30	78-75	79-20
100	76-00	77-00	78-00	79-00	80-00	81-00	82-00	83-00	84-00	85-00	86-00	87-00	87-50	88-00

Nos.	89 ct.	90 ct.	91 ct.	92 ct.	93 ct.	94 ct.	95 ct.	96 ct.	97 ct.	98 ct.	99 ct.	\$1.	\$2.	\$3.
2	1-78	1-80	1-82	1-84	1-86	1-88	1-90	1-92	1-94	1-96	1-98	2	4	6
3	2-67	2-70	2-73	2-76	2-79	2-82	2-85	2-88	2-91	2-94	2-97	3	6	9
4	3-56	3-60	3-64	3-68	3-72	3-76	3-80	3-84	3-88	3-92	3-96	4	8	12
5	4-45	4-50	4-55	4-60	4-65	4-70	4-75	4-80	4-85	4-90	4-95	5	10	15
6	5-34	5-40	5-46	5-52	5-58	5-64	5-70	5-76	5-82	5-88	5-94	6	12	18
7	6-23	6-30	6-37	6-44	6-51	6-58	6-65	6-72	6-79	6-86	6-93	7	14	21
8	7-12	7-20	7-28	7-36	7-44	7-52	7-60	7-68	7-76	7-84	7-92	8	16	24
9	8-01	8-10	8-19	8-28	8-37	8-46	8-55	8-64	8-73	8-82	8-91	9	18	27
10	8-90	9-00	9-10	9-20	9-30	9-40	9-50	9-60	9-70	9-80	9-90	10	20	30
11	9-79	9-90	10-01	10-12	10-23	10-34	10-45	10-56	10-67	10-78	10-89	11	22	33
12	10-68	10-80	10-92	11-04	11-16	11-28	11-40	11-52	11-64	11-76	11-88	12	24	36
13	11-57	11-70	11-83	11-96	12-09	12-22	12-35	12-48	12-61	12-74	12-87	13	26	39
14	12-46	12-60	12-74	12-88	13-02	13-16	13-30	13-44	13-58	13-72	13-86	14	28	42
15	13-35	13-50	13-65	13-80	13-95	14-10	14-25	14-40	14-55	14-70	14-85	15	30	45
16	14-24	14-40	14-56	14-72	14-88	15-04	15-20	15-36	15-52	15-68	15-84	16	32	48
17	15-13	15-30	15-47	15-64	15-81	15-98	16-15	16-32	16-49	16-66	16-83	17	34	51
18	16-02	16-20	16-38	16-56	16-74	16-92	17-10	17-28	17-46	17-64	17-82	18	36	54
19	16-91	17-10	17-29	17-48	17-67	17-86	18-05	18-24	18-43	18-62	18-81	19	38	57
20	17-80	18-00	18-20	18-40	18-60	18-80	19-00	19-20	19-40	19-60	19-80	20	40	60
21	18-69	18-90	19-11	19-32	19-53	19-74	19-95	20-16	20-37	20-58	20-79	21	42	63
22	19-58	19-80	20-02	20-24	20-46	20-68	20-90	21-12	21-34	21-56	21-78	22	44	66
23	20-47	20-70	20-93	21-16	21-39	21-62	21-85	22-08	22-31	22-54	22-77	23	46	69
24	21-36	21-60	21-84	22-08	22-32	22-56	22-80	23-04	23-28	23-52	23-76	24	48	72
25	22-25	22-50	22-75	23-00	23-25	23-50	23-75	24-00	24-25	24-50	24-75	25	50	75
30	26-70	27-00	27-30	27-60	27-90	28-20	28-50	28-80	29-10	29-40	29-70	30	60	90
40	35-60	36-00	36-40	36-80	37-20	37-60	38-00	38-40	38-80	39-20	39-60	40	80	120
50	44-50	45-00	45-50	46-00	46-50	47-00	47-50	48-00	48-50	49-00	49-50	50	100	150
60	53-40	54-00	54-60	55-20	55-80	56-40	57-00	57-60	58-20	58-80	59-40	60	120	180
70	62-30	63-00	63-70	64-40	65-10	65-80	66-50	67-20	67-90	68-60	69-30	70	140	210
80	71-20	72-00	72-80	73-60	74-40	75-20	76-00	76-80	77-60	78-40	79-20	80	160	240
90	80-10	81-00	81-90	82-80	83-70	84-60	85-50	86-40	87-30	88-20	89-10	90	180	270
100	89-00	90-00	91-00	92-00	93-00	94-00	95-00	96-00	97-00	98-00	99-00	100	200	300

DECIMAL TABLES.

Decimals equivalent to the number of Gills or fractional parts of a Pint, Quart, or Gallon.— See Gauging, Epitome of Mensuration, &c.

[It is usual, except in cases where the number multiplied is large, to drop all but the two first figures in decimals.]

Deci- mals.	Gills.	Pints.	Quarts.	Gallon.	Deci- mals.	Gills.	Pints.	Quarts.	Gallon.	Decimals.	Gills.	Pints.	Quarts.	Gallon.
.03125	1	$\frac{1}{4}$	$\frac{1}{8}$	1-32	.375	12	$\frac{3}{4}$	1 $\frac{1}{2}$	3-8	.71875	23	$\frac{5}{8}$	$\frac{27}{32}$	23-32
.0625	2	$\frac{1}{2}$	$\frac{1}{4}$	1-16	.40625	13	$\frac{3}{4}$	1 $\frac{1}{2}$	13-32	.75	24	$\frac{6}{8}$	$\frac{3}{4}$	3-4
.09375	3	$\frac{3}{8}$	$\frac{3}{16}$	3-32	.4375	14	$\frac{3}{4}$	1 $\frac{1}{2}$	7-16	.78125	25	$\frac{6}{8}$	$\frac{3}{8}$	25-32
.125	4	1	$\frac{1}{2}$	1-8	.46875	15	$\frac{3}{4}$	1 $\frac{1}{2}$	15-32	.8125	26	$\frac{6}{8}$	$\frac{3}{4}$	13-16
.15625	5	$1\frac{1}{4}$	$\frac{3}{8}$	5-32	.5	16	4	2	1-2	.84375	27	$\frac{6}{8}$	$\frac{3}{8}$	27-32
.1875	6	$1\frac{1}{2}$	$\frac{1}{2}$	3-16	.53125	17	$\frac{1}{2}$	$2\frac{1}{8}$	17-32	.875	28	7	$\frac{3}{4}$	7-8
.21875	7	$1\frac{3}{4}$	$\frac{7}{8}$	7-32	.5625	18	$\frac{1}{2}$	$2\frac{1}{4}$	9-16	.90625	29	$7\frac{1}{2}$	$\frac{3}{8}$	29-32
.25	8	2	1	1-4	.59375	19	$\frac{1}{2}$	$2\frac{1}{8}$	19-32	.9375	30	$7\frac{1}{2}$	$\frac{3}{8}$	15-16
.28125	9	$2\frac{1}{4}$	$1\frac{1}{8}$	9-32	.625	20	5	$2\frac{1}{2}$	5-8	.96875	31	$7\frac{1}{2}$	$\frac{3}{8}$	31-32
.3125	10	$2\frac{1}{2}$	$1\frac{1}{4}$	5-16	.65625	21	$5\frac{1}{2}$	$2\frac{3}{8}$	21-32	1.000	32	8	4	1 gal
.34375	11	$2\frac{3}{4}$	$1\frac{3}{8}$	11-32	.6875	22	$5\frac{1}{2}$	$2\frac{3}{4}$	11-16					

APPLICATION. Required the *gallons* in any Cylindrical Vessel. Suppose a vessel 9 1-2 inches deep, 9 inches diameter, and contents 2-6163, that is, 2 gallons and 61 hundredth parts of a gallon, now to ascertain this decimal of a gallon refer to the above Table, for the decimal that is nearest, which is .625, opposite to which is 20 gills, 5 pints, and 2 1-2 quarts, either being the amount of the decimal required, consequently the content of the vessel is 2 gallons and 5 pints.

Decimals equivalent to the fractional parts of a Pound. — See Tables of Metals, Weights and Measures, &c.

.03125	$\frac{1}{2}$ oz.	.28125	$4\frac{1}{2}$ oz.	.53125	$8\frac{1}{2}$ oz.	.78125	$12\frac{1}{2}$ oz.
.0625	1	.3125	5	.5625	9	.8125	13
.09375	$1\frac{1}{2}$	.34375	$5\frac{1}{2}$	.59375	$9\frac{1}{2}$	.84375	$13\frac{1}{2}$
.125	2	.375	6	.625	10	.875	14
.15625	$2\frac{1}{2}$	.40625	$6\frac{1}{2}$	.65625	$10\frac{1}{2}$	.90625	$14\frac{1}{2}$
.1875	3	.4375	7	.6875	11	.9375	15
.21875	$3\frac{1}{2}$	.46875	$7\frac{1}{2}$	.71875	$11\frac{1}{2}$	.96875	$15\frac{1}{2}$
.25	4	.5	8	.75	12	1.000	16

APPLICATION. Required the *weight* of one foot of Flat Bar Iron, 3-4 ths of an inch in thickness, and 1 7-8 ths inches breadth. Refer to the Table of Flat Bar Iron, and you will find the weight of 1 foot of the above dimensions, to be 4-696, that is, 4 pounds and 696 thousandth parts of a pound; and to ascertain this decimal in ounces, refer to the above Table for the decimal that is nearest, and you will find it to be .6875, opposite to which is 11 ounces, the weight of the decimal required, consequently the weight of 1 foot length of the flat bar in question, will be 4 pounds 11 ounces

APPLICATION. Required the *weight* of Tire Bar Iron, 1-2 an inch thick, and 1 5-8 ths of an inch broad, 16 feet long.

See Table of Bar Iron, where 1 foot length is 2-716 lbs., then

$$2-716 \times 16 = 43-456, \quad (\text{or } 43 \text{ lbs. } 7\frac{1}{2} \text{ oz. being the mean between } .437 \text{ \& } .468).$$

APPLICATION. Required the *weight* of 35 Bars, Round Iron, 1 1-4 inch diameter, 12 feet long, each.

See Table of Round Iron, where 1 foot in length is 4.09 lbs., then
 $4.09 \times 12 \times 35 = 1717.80$ (or 1717 lbs. 13 oz. being the nearest equivalent).

APPLICATION. Required the *weight* of 64 Square Feet of Boiler Plate Iron, 3-16ths of an inch thick. See Tables of weight and thickness of Plate Iron, Copper, Brass and Lead.

As 1 Square Foot weighs 7.5 lbs., then $7.5 \times 64 = 480.0$ lbs.

APPLICATION. Required the *weight* of 22 Square, or superficial, Feet of Sheet Iron, No. 9 Wire Gauge thickness. See Tables Sheet Iron, Copper, and Brass, from No. 1 to No. 30 Wire Gauge thickness.

As 1 square foot weighs 6.24 lbs., then

$$6.24 \times 22 = 137.28 \quad (137 \text{ lbs. } 4\frac{1}{2} \text{ oz.})$$

Decimals equivalent to the fractional parts of an Inch when divided into thirty-two parts; likewise the Decimals equivalent to the fractional parts of a Foot.

Decimals.	Parts of an Inch.	Decimals.	Parts of an Inch.	Decimals.	Parts of a Foot.
.03125	1-32	.53125	$\frac{1}{2}$ & 1-32	.01041	$\frac{1}{32}$
.0625	1-16	.5625	$\frac{1}{2}$ & 1-16	.02083	$\frac{1}{16}$
.09375	3-32	.59375	$\frac{1}{2}$ & 3-32	.03125	$\frac{1}{8}$
.125	$\frac{1}{8}$	.625	$\frac{1}{2}$	.04166	$\frac{1}{4}$
.15625	$\frac{1}{8}$ & 1-32	.65625	$\frac{1}{2}$ & 1-32	.05208	$\frac{1}{4}$ & 1-32
.1875	$\frac{1}{8}$ & 1-16	.6875	$\frac{1}{2}$ & 1-16	.0625	$\frac{1}{4}$ & 1-16
.21875	$\frac{1}{8}$ & 3-32	.71875	$\frac{1}{2}$ & 3-32	.07291	$\frac{1}{4}$ & 3-32
.25	$\frac{1}{4}$	.75	$\frac{3}{4}$	.0833	$\frac{1}{3}$
.28125	$\frac{1}{4}$ & 1-32	.78125	$\frac{3}{4}$ & 1-32	.1666	$\frac{1}{2}$
.3125	$\frac{1}{4}$ & 1-16	.8125	$\frac{3}{4}$ & 1-16	.25	$\frac{1}{4}$
.34375	$\frac{1}{4}$ & 3-32	.84375	$\frac{3}{4}$ & 3-32	.3333	$\frac{1}{3}$
.375	$\frac{3}{8}$	.875	$\frac{7}{8}$	.4166	$\frac{5}{12}$
.40625	$\frac{3}{8}$ & 1-32	.90625	$\frac{7}{8}$ & 1-32	.5	$\frac{1}{2}$
.4375	$\frac{3}{8}$ & 1-16	.9375	$\frac{7}{8}$ & 1-16	.5833	$\frac{7}{12}$
.46875	$\frac{3}{8}$ & 3-32	.96875	$\frac{7}{8}$ & 3-32	.6666	$\frac{2}{3}$
.5	$\frac{1}{2}$	1.000	1 inch.	.75	$\frac{3}{4}$
				.8333	$\frac{5}{6}$
				.9166	$\frac{11}{12}$

APPLICATION. 1. Required the number of Square Yards in a floor whose length is $13\frac{1}{2}$, and breadth $9\frac{3}{4}$ feet.

$$13.5 \times 9.75 = 131.625 \div 9 = 14.625 \text{ square yards.}$$

2. Required the Area of a Fire Grate, under the boiler of a Steam Engine, whose length is 4 feet 7 inches, and width 3 feet 6 inches.

7 inches equal .5833 and 6 inches equal .5 (see table), then

$$4.5833 \times 3.5 = 16.04155 \text{ square feet.}$$

3. Required the Area of the side of a square piece of Board, 8 3-16 inches in length.

$$1.8 \text{ & } 1-16 = 3-16 \text{ equal } .1875 \text{ (see table),}$$

$$8.1875 \times 8.1875 = 67.03515625 \text{ square inches.}$$

4. Required the Cubic Contents in Inches of a Plate $30\frac{1}{2}$ inches in length, 8 7-8 inches in breadth, and 5-8 inches thick.

$$30.50 \times 8.875 = 270.68750 \times .625 = 169.17 + \text{cubic inches.}$$

5.—Required the Register Tonnage of a single decked vessel, length 101 feet and $9\frac{1}{2}$ inches, breadth 26 feet 3 inches, and depth 9 feet 2 inches. Opposite 9 and $\frac{1}{2}$ inch. is .75 and .04166, which added together equal .79166: Then, $101.79166 - 3.5 \text{ of } 26.25 \times 26.25 \times 9.1666 \div 95 = 217.88.95\text{ths tons.}$

TABLE OF EQUIVALENT PRICES TO COMMON WEIGHTS AND MEASURES.

The following Table will be found convenient in calculating the price of pounds, feet, yards, gallons, &c. In the first division, a ton (or quantity of one article,) is divided into cwt., qr. and stone. If a ton (or article,) cost \$2-50, 112 will cost 14 cts.; 28, 4 cts.; 14, 2 cts. In the second division, if 1 lb (or one article,) cost 1-8 of a ct., one doz. will cost 1½ cts.; 20, 2½ cts.; 100, 12½ cts.; 120, 15 cts.; 144, 18 cts.; 1,000, \$1-25: and the same may be reversed, viz: take the figures at the foot of the right hand column, and it will be seen, that, if 1,000 lbs. (or 1,000 yards, feet, or gallons,) cost \$200, a ton (or 2,240 articles,) will cost \$448.

Per ton or 2240 lbs. \$ cts.	Cwt. or 112 lbs. \$ cts.	qr. or 28 lbs. \$ cts.	Sto. or 14 lbs. \$ cts.	lb. or 1. cts.	Doz. or 12. \$ cts.	Score or 20. \$ cts.	Per 100 \$ cts.	Per 120 \$ cts.	Gross or 144 \$ cts.	Per 1000 \$ cts.
2-80	0-14	0-04	0-02	½	1½	2½	12½	15	18	1-25
5-60	0-28	0-07	0-04	¾	3	5	25	30	36	2-50
11-20	0-56	0-14	0-07	1	6	10	50	60	72	5 00
16-80	0-84	0-21	0-11	1½	9	15	75	90	1-08	7 50
22-40	1-12	0-28	0-14	1	12	20	1-00	1-20	1-44	10-00
33-60	1-68	0-42	0-21	1½	18	30	1-50	1-80	2-16	15-00
44-80	2-24	0-56	0-28	2	24	40	2-00	2-40	2-88	20-00
56-00	2-80	0-70	0-35	2½	30	50	2-50	3-00	3-60	25-00
67-20	3-36	0-84	0-42	3	36	60	3-00	3-60	4-32	30 00
78-40	3-92	0-98	0-49	3½	42	70	3-50	4-20	5-04	35 00
89-60	4-48	1-12	0-56	4	48	80	4-00	4-80	5-76	40-00
100-80	5-04	1-26	0-63	4½	54	90	4-50	5-40	6-48	45-00
112-00	5-60	1-40	0-70	5	60	1-00	5-00	6-00	7-20	50 00
123-20	6-16	1-54	0-77	5½	66	1-10	5-50	6-60	7-92	55 00
134-40	6-72	1-68	0-84	6	72	1-20	6-00	7-20	8-64	60-00
145-60	7-28	1-82	0-91	6½	78	1-30	6-50	7-80	9-36	65-00
156-80	7-84	1-96	0-98	7	84	1-40	7-00	8-40	10-08	70-00
168-00	8-40	2-10	1-05	7½	90	1-50	7-50	9-00	10-80	75 00
179-20	8-96	2-24	1-12	8	96	1-60	8-00	9-60	11-52	80-00
190-40	9-52	2-38	1-19	8½	1-02	1-70	8-50	10-20	12-24	85-00
201-60	10-08	2-52	1-26	9	1-08	1-80	9-00	10-80	12-96	90-00
212-80	10-64	2-66	1-33	9½	1-14	1-90	9-50	11-40	13-68	95-00
224-00	11-20	2-80	1-40	10	1-20	2-00	10-00	12-00	14-40	100-00
235-20	11-76	2-94	1-47	10½	1-26	2-10	10-50	12-60	15-12	105-00
246-40	12-32	3-08	1-54	11	1-32	2-20	11-00	13-20	15-84	110 00
257-60	12-88	3-22	1-61	11½	1-38	2-30	11-50	13-80	16-56	115 00
268-80	13-44	3-36	1-68	12	1-44	2-40	12-00	14-40	17-28	120-00
280-00	14-00	3-50	1-75	12½	1-50	2-50	12-50	15-00	18-00	125-00
291-20	14-56	3-64	1-82	13	1-56	2-60	13-00	15-60	18-72	130-00
313-60	15-68	3-92	1-96	14	1-68	2-80	14-00	16-80	20-16	140-00
336-00	16-80	4-20	2-10	15	1-80	3-00	15-00	18-00	21-60	150-00
358-40	17-92	4-48	2-24	16	1-92	3-20	16-00	19-20	23-04	160-00
380-80	19-04	4-76	2-38	17	2-04	3-40	17-00	20-40	24-48	170 00
403-20	20-16	5-04	2-52	18	2-16	3-60	18-00	21-60	25-92	180-00
425-60	21-28	5-32	2-66	19	2-28	3-80	19-00	22-80	27-36	190-00
448-00	22-40	5-60	2-80	20	2-40	4-00	20-00	24-00	28-80	200-00

WEIGHT OF A TEN FEET LENGTH OF HOOP IRON, AND ITS THICKNESS ON THE WIRE GAUGE.

No. 1 Wire Gauge is $\frac{5}{16}$ ths of an inch; 4 is $\frac{1}{4}$; 7 is $\frac{3}{16}$; 11 is $\frac{1}{8}$; 13 is $\frac{1}{2}$; 15 is $\frac{1}{4}$; 16 is $\frac{1}{16}$; 17 is $\frac{1}{8}$; 19 is $\frac{1}{2}$; 21 is $\frac{1}{25}$; 22 is $\frac{1}{2}$.

Width	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.	thick.
Ins.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.	lbs.
$\frac{3}{8}$	5.07	4.68	4.28	3.90	3.51	3.12	2.73	2.34	1.95	1.76	1.56	1.36	1.16			
$\frac{7}{8}$	5.90	5.45	4.97	4.55	4.07	3.62	3.17	2.70	2.27	2.05	1.80	1.57	1.35			
1	6.76	6.25	5.71	5.20	4.68	4.16	3.65	3.12	2.60	2.35	2.08	1.81	1.55			
$1\frac{1}{8}$	7.60	7.02	6.42	5.85	5.26	4.68	4.10	3.51	2.92	2.62	2.34	2.04	1.75			
$1\frac{1}{2}$	8.45	7.81	7.14	6.50	5.85	5.21	4.56	3.90	3.25	2.93	2.60	2.27	1.93			
$1\frac{3}{8}$	9.30	8.59	7.60	7.15	6.43	5.73	5.01	4.29	3.57	3.23	2.86	2.49	2.13			
$1\frac{1}{2}$	10.15	9.37	8.57	7.80	7.02	6.25	5.47	4.68	3.90	3.52	3.12	2.72	2.32			
$1\frac{3}{8}$	10.95	10.15	9.25	8.45	7.55	6.75	5.90	5.05	4.20	3.80	3.35	2.90	2.50			
1	11.80	10.90	9.95	9.10	8.15	7.25	6.35	5.40	4.55	4.10	3.60	3.15	2.70			
$1\frac{1}{2}$	12.65	11.65	10.65	9.75	8.75	7.75	6.80	5.80	4.85	4.35	3.85	3.35	2.90			
2	13.53	12.50	11.43	10.40	9.36	8.33	7.30	6.25	5.20	4.70	4.16	3.63	3.10			
$2\frac{1}{8}$	14.37	13.27	12.14	11.05	9.95	8.85	7.75	6.64	5.52	4.97	4.42	3.85	3.30			
$2\frac{1}{2}$	15.21	14.05	12.85	11.70	10.53	9.37	8.20	7.03	5.85	5.25	4.68	4.08	3.50			
$2\frac{3}{8}$	16.07	14.84	13.32	12.35	11.11	9.89	8.66	7.42	6.17	5.58	4.94	4.31	3.68			
$2\frac{1}{2}$	16.90	15.62	14.28	13	11.71	10.42	9.12	7.81	6.50	5.87	5.20	4.54	3.87			
2	17.75	16.40	14.75	13.65	12.28	10.93	9.68	8.19	6.82	6.15	5.45	4.75	4.05			
$2\frac{3}{8}$	18.61	17.18	15.21	14.30	12.87	11.46	10.03	8.59	7.15	6.46	5.72	4.99	4.26			
$2\frac{1}{2}$	19.45	17.96	16.18	14.95	13.46	11.98	10.49	8.98	7.47	6.75	5.98	5.22	4.45			
3	20.30	18.75	17.15	15.60	14.05	12.50	10.95	9.37	7.80	7.05	6.25	5.45	4.65			
$3\frac{1}{8}$	21.90	20.30	18.50	16.90	15.10	13.50	11.80	10.10	8.40	7.60	6.70	5.80	5			
$3\frac{1}{2}$	23.60	21.80	19.90	18.20	16.30	14.50	12.70	10.80	9.10	8.20	7.20	6.30	5.40			
$3\frac{3}{8}$	25.30	23.30	21.30	19.50	17.50	15.50	13.60	11.60	9.70	8.70	7.70	6.70	5.80			
4	27.07	25	22.86	20.80	18.73	16.67	14.60	12.50	10.40	9.40	8.33	7.26	6.20			
$4\frac{1}{8}$	28.75	26.55	24.28	22.10	19.90	17.70	15.50	13.28	11.05	9.95	8.84	7.70	6.60			
$4\frac{1}{2}$	30.43	28.10	25.71	23.40	21.07	18.75	16.40	14.06	11.70	10.50	9.36	8.17	7			
$4\frac{3}{8}$	32.14	29.68	26.64	24.70	22.23	19.79	17.33	14.84	12.35	11.16	9.88	8.62	7.36			
5	33.80	31.25	28.57	26	23.42	20.84	18.25	15.63	13	11.75	10.41	9.08	7.75			
$5\frac{1}{8}$	35.50	32.81	29.50	27.30	24.56	21.86	19.16	16.38	13.65	12.31	10.91	9.51	8.11			
$5\frac{1}{2}$	37.22	34.37	30.43	28.60	25.75	22.92	20.07	17.18	14.30	12.92	11.45	9.98	8.22			
$5\frac{3}{8}$	38.91	35.93	32.36	29.90	26.92	23.96	20.98	17.96	14.95	13.51	11.97	10.44	8.91			
6	40.60	37.50	34.30	31.20	28.10	25	21.90	18.75	15.60	14.10	12.50	10.90	9.30			

Hoop Iron $\frac{5}{8}$ broad, No. 21, 685 lbs.; $\frac{3}{4}$, No. 20, 885 lbs.; $\frac{7}{8}$, No. 19, 1,24 lbs.

REGULAR SIZES COOPER HOOPS.

Width.	Gauge.	Width.	Gauge.
5-8 & 3-4..	No. 20	$1\frac{1}{2}$ 13-6, $1\frac{1}{2}$ 15-8 inch.....	No. 16
7-8..	19	$1\frac{1}{2}$ 17-8, $2\frac{1}{2}$ 21-8, $2\frac{1}{2}$ 23-8, inch..	15
1.....	18	$2\frac{1}{2}$ 25-8, $2\frac{3}{4}$ 27-8, 3 inches,.....	14
11-8..	17	$3\frac{1}{4}$, $3\frac{1}{2}$, 3 3-4 inches,.....	13
$1\frac{1}{2}$	16	4 inches,.....	12

Barrel Hoops, 1, 1 1-16, $1\frac{1}{8}$ in. wide, Nos. 16 to 18 Wire Gauge, cut 4 to 6 ft. long.
 Puncheon Hoops, $1\frac{1}{8}$, and $1\frac{1}{2}$ in. wide, 8 ft., 8 ft. 6 in. to 9 ft. long; Nos. 15 and 16
 Butt Hoops, $1\frac{1}{8}$, $1\frac{1}{2}$, 2, and $2\frac{1}{2}$ inches broad, 10 to 12 ft. long. [Wire Gauge.
 Vat Hoops, 3 to 4 inches broad, Nos. 8, 9, 10, and 11 W. Gauge, 20 to 30 ft. long.
 Mast Hoops, 3 to 6 inches broad, 3-16 to $\frac{1}{2}$ inch thick, 12 to 20 feet long.
 Mill-Stone Hoops. 5 to 6 inches broad, Nos. 10 and 11 Wire Gauge.
 Coach and Nave Hoops, $1\frac{1}{2}$ to 3 inches broad, 1-8 to 3-16 inches thick.
 Clog Hoops, $\frac{3}{4}$ to $1\frac{1}{2}$ inch wide, Nos. 11 to 14 Wire Gauge.
 Chain Hoops, $\frac{1}{2}$ to $\frac{3}{4}$ inch wide, No. 10 Wire Gauge.

WEIGHT OF FLAT BAR IRON, (see table) for Tire Bars, &c., from $\frac{1}{2}$ to 1 inch thick, and from 1 to 6 inches wide.

See Mensuration for Rule for determining the length of Iron in an unbent state in forming a hoop or ring.

AN ALMANAC FOR THIRTY YEARS.

SHOWING THE DAY OF THE WEEK AND MONTH IN ANY YEAR FROM 1851 TO 1880.

Example.—To ascertain the day of the week corresponding to December 25, 1855, look in the Table of Years for 1855, opposite which will be found the letter G, (termed the Dominical letter); then look in the Table of Months, opposite December, for the same letter (G), and underneath the column containing it will be found the Calendar for December 1855, which shows December 25 to be Tuesday. When the Calendar for the Month is found, any other Day of the Week or Month can easily be ascertained.

A note is made payable at six months from June 4th, 1855, on what month and day of the month will it fall due? Answer—Friday, December 7, grace included.

It will be observed that there are two letters opposite the Leap Years. The first letter is used for January and February, the second for the other Months.

Months.		A.		B.		C.		D.		E.		F.		G.	
January,....		A.		B.		C.		D.		E.		F.		G.	
February,...		D.		E.		F.		G.		A.		B.		C.	
March,.....		D.		E.		F.		G.		A.		B.		C.	
April,.....		G.		A.		B.		C.		D.		E.		F.	
May,.....		B.		C.		D.		E.		F.		G.		A.	
June,.....		E.		F.		G.		A.		B.		C.		D.	
July,.....		G.		A.		B.		C.		D.		E.		F.	
August,.....		C.		D.		E.		F.		G.		A.		B.	
September,...		F.		G.		A.		B.		C.		D.		E.	
October,....		A.		B.		C.		D.		E.		F.		G.	
November,...		D.		E.		F.		G.		A.		B.		C.	
December,...		F.		G.		A.		B.		C.		D.		E.	
Years.		1	S.	1	Sa.	1	Fr.	1	Th.	1	W.	1	Tu.	1	M.
1851 E.		2	M.	2	S.	2	Sa.	2	Fr.	2	Th.	2	W.	2	Tu.
1852 D. C.		3	Tu.	3	M.	3	S.	3	Sa.	3	Fr.	3	Th.	3	W.
1853 B.		4	W.	4	Tu.	4	M.	4	S.	4	Sa.	4	Fr.	4	Th.
1854 A.		5	Th.	5	W.	5	Tu.	5	M.	5	S.	5	Sa.	5	Fr.
1855 G.		6	Fr.	6	Th.	6	W.	6	Tu.	6	M.	6	S.	6	Sa.
1856 F. E.		7	Sa.	7	Fr.	7	Th.	7	W.	7	Tu.	7	M.	7	S.
1857 D.		8	S.	8	S.	8	Fr.	8	Th.	8	W.	8	Tu.	8	M.
1858 C.		9	M.	9	S.	9	Sa.	9	Fr.	9	Th.	9	W.	9	Tu.
1859 B.		10	Tu.	10	M.	10	S.	10	Sa.	10	Fr.	10	Th.	10	W.
1860 A. G.		11	W.	11	Tu.	11	M.	11	S.	11	Sa.	11	Fr.	11	Th.
1861 F.		12	Th.	12	W.	12	Tu.	12	M.	12	S.	12	Sa.	12	Fr.
1862 E.		13	Fr.	13	Th.	13	W.	13	Tu.	13	M.	13	S.	13	Sa.
1863 D.		14	Sa.	14	Fr.	14	Th.	14	W.	14	Tu.	14	M.	14	S.
1864 C. B.		15	S.	15	Sa.	15	Fr.	15	Th.	15	W.	15	Tu.	15	M.
1865 A.		16	M.	16	S.	16	Sa.	16	Fr.	16	Th.	16	W.	16	Tu.
1866 G.		17	Tu.	17	M.	17	S.	16	Sa.	17	Fr.	17	Th.	17	W.
1867 F.		18	W.	18	Tu.	18	M.	18	S.	18	Sa.	18	Fr.	18	Th.
1868 E. D.		19	Th.	19	W.	19	Tu.	19	M.	19	S.	19	Sa.	19	Fr.
1869 C.		20	Fr.	20	Th.	20	W.	20	Tu.	20	M.	20	S.	20	Sa.
1870 B.		21	Sa.	21	Fr.	21	Th.	21	W.	21	Tu.	21	M.	21	S.
1871 A.		22	S.	22	Sa.	22	Fr.	22	Th.	22	W.	22	Tu.	22	M.
1872 G. F.		23	M.	23	S.	23	Sa.	23	Fr.	23	Th.	23	W.	23	Tu.
1873 E.		24	Tu.	24	M.	24	S.	24	Sa.	24	Fr.	24	Th.	24	W.
1874 D.		25	W.	25	Tu.	25	M.	25	S.	25	Sa.	25	Fr.	25	Th.
1875 C.		26	Th.	26	W.	26	Tu.	26	M.	26	S.	26	Sa.	26	Fr.
1876 B. A.		27	Fr.	27	Th.	27	W.	27	Tu.	27	M.	27	S.	27	Sa.
1877 G.		28	Sa.	28	Fr.	28	Th.	28	W.	28	Tu.	28	M.	28	S.
1878 F.		29	S.	29	Sa.	29	Fr.	29	Th.	29	W.	29	Tu.	29	M.
1879 E.		30	M.	30	S.	30	Sa.	30	Fr.	30	Th.	30	W.	30	Tu.
1880 D. C.		31	Tu.	31	M.	31	S.	31	Sa.	31	Fr.	31	Th.	31	W.

BOOK - KEEPING.

The *first* Book is the **DAY BOOK**. It commences with an inventory of the Tradesman's effects, viz. his *Cash, Merchandise, Real Estate, Notes, and obligations* payable to him, and sums due him, &c., and also all the *Debts* due by him to others, on *Notes, Book Accounts, &c.* This book contains the entry of every transaction made at the time it occurs, in plain and concise language. The Day Book should be kept with great care and accuracy, for it contains the original entries, and is the only book received as evidence in litigated cases. It should be regularly paged throughout. When an entry is made in the Day Book which is settled by cash before it is *posted* in the Leger, the *posting* may be omitted, and "*Paid*" written against the charge, and the amount immediately entered in the Cash Book. If a person resides in another town, the name of his residence should be mentioned in the Day-Book.

The *second* Book is the **LEGER**, which is the principal Book, into which the entries from the Day Book are so *posted* under *Dr.* and *Cr.*, that the amount of each account is immediately apparent. The Leger should be regularly paged throughout, and should contain an alphabetical list of the names of persons with whom accounts are opened, with the number of the folio on which they can be found. The requisite number of pages, at the beginning of the Leger, can be appropriated for this Index. Merchants, doing a large business, keep their books by double entry; but the retailer, from the smallness of his sales, seldom does so. He may, however, find it convenient to open the following accounts:

STOCK—Is made *Dr.* for the amount you owe, and *Cr.* for your effects.

CASH—Is *Dr.* for all money received, and *Cr.* for all paid out.

NOTES RECEIVABLE—Are *Dr.* for notes received, and *Cr.* for all disposed of.

NOTES PAYABLE—Are *Dr.* for all notes paid or taken up that you have given, and *Cr.* for all you give.

INTEREST—Is *Dr.* for amounts allowed on discounts, accounts current, and interest on notes payable, and *Cr.* for balances of interest in your favor.

EXPENSE.—This account is *Dr.* for all charges, such as workmen, laborers, freight, truckage, postage, rent, &c.

PROFIT AND LOSS—Is *Dr.* for all charges and losses, and *Cr.* for all gains.

These accounts should be opened in the Leger in the same manner as with individuals, the *Dr.* always being on the left hand, and the *Cr.* on the right.

CORRECTION OF ERRORS.—If the entry of an article be omitted in the Day Book, enter it in the next vacant place, writing the word "*omitted*" If a wrong name be entered draw a line underneath, and write the right name above. If an error be made in an account, write the word "*error*" against it, (omitting to post,) and make a correct entry.

In the Leger, if an item has been posted to a wrong account, post on the opposite side, "*By or To Error,*" and mark both by a star;—when posted on the wrong side of an account balance it by posting "*To or By Error*" on the opposite, and then post it on the right side. Erasures should not be made.

An *Account Current* is a transcript from both sides of a Leger, with the particular dates and explanations from the original entries.

The *third* Book is the **CASH BOOK**, in which the daily receipts and payments of money are recorded, with the date and other particulars. The account should be balanced monthly, or at shorter intervals, and the totals may be transferred to *Dr.* and *Cr.* of the Leger.—See *Cash Book*.

NOTE.—Retailers allow the money received during the day to remain until evening, then count it, and enter it in the Cash Book, as the amount of sales for the day. Some Retailers enter on a slate all cash received during the day from sales and enter it in the Cash Book in the evening.

Persons whose business is too limited to require a *set* of books, usually keep but one. This book may be ruled like the Leger; but the charges should be entered in full as in the Day-Book, sufficient room being left to note down the name, quality, price, &c., of the articles.

When you give an *Order*, charge the man to whom it is given, and credit the man on whom it is drawn, without waiting to know if he accepts it.

Whenever a Bill is settled by Cash, or otherwise, date it on the day it is paid, or settled.

When you pay a person either in part or in full, always take a receipt.

DAY BOOK.

Boston, October 1, 1857.

11

P. of L.			\$	c.
	Inventory of Effects on commencing business:—			
	By cash on hand,.....	\$300 00		
	" Merchandise in store,.....	200 00		
			500	00
	I am indebted—			
	To — — —,		000	00
	Net Capital,.....		500	00
	2			
3	H. LONG & BROTHER, New York,	Dr.		
	To 2 Law Libraries,	a \$1.25,	2	50
	" 2 Laws of the sea,	" .25,		50
	" 6 Business Man's Assistant,	" .17,	1	02
	" 6 Law of Debtor and Creditor,	" .17,	1	02
	" 3 Landlord's and Tenant's Assistant,	" .20,		60
	" 1 Shipper's and Carrier's 'do.,.....	25	5	89
	3			
3	JOHN SMITH,	Dr.		
	To 1 ps. bleached Sheeting,	32 yds. a \$0.07,	2	24
	" 4 Linen Cambric Hdkfs.,	" .50,	2	00
	" 6 vds. blue Cassimeres,	" 2.00,	12	00
	" 12 " Calico,	" .20,	2	40
	" 4 pairs Footings,	" .25,	1	00
	4			
3	PARKER & HALL,	Cr.		
	By 1 bbl. brown Havana Sugar, ..net 240 lbs. a \$0.05,		12	00
	" 1 bag Cuba Coffee,	" 100 " " .09,		9 00
	" 1 chest Ningyong Tea,	" 62 " " .25,	15	50
	" 1 bbl. Sperm Oil,	" 32 gals. " 1.00,	32	00
	5			
3	H. LONG & BROTHER, New York,	Cr.		
	By Cash on account,		4	00
	6			
3	H. LONG & BROTHER, New York,	Dr.		
	To 6 Law Cabinets,	a \$1.00,	6	00
	" 10 reams Printing Paper,	" 4.00,	40	00
	" 4 Shipmaster's and Seaman's Assistant, " .62½,		2	50
	7			
3	PARKER & HALL,	Dr.		
	To Cash on account,		11	00
	8			
Paid. Enter in Cash Book.	Sold I. R. BUTTS, for Cash,			
	4 Linen Cambric Hdkfs.,	a \$0.50,	2	00
	2 pr. Lisle Gloves,	" .25,		50
	19 yds. Carpeting,	" 1.00,	19	00
	9			
Paid. C. B.	Bot. of CHARLES CHASE, for Cash,			
	Mdse., as per Bill,		45	00
	15			
3	H. LONG & BROTHER,	Cr.		
	By their note at 60 days in full on settlement,		50	39
	20			
3	PARKER & HALL,	Dr.		
	To my note at 30 days from date in full on settlement,		57	50
	21			
3	JOHN SMITH,	Cr.		
	By Cash on account,		10	00

LEGER.

[3]

Dr.				H. LONG & BROTHER.				Cr.			
1857.								1857.			
Oct. 2	To Mdse.,.....	1	5	89	Oct. 5	By cash,.....	1	4	00		
" 6	" "	1	48	50	" 15	" balance,		50	39		
				54	39				54	39	
Oct. 15	To Balance,		50	39	Oct. 15	By Note,	2	50	39		

JOHN SMITH.

1857.					1857.						
Oct. 3	To Mdse.,.....	1	19	64	Oct. 21	By Cash,	2	10	00		

PARKER & HALL.

1857.					1857.						
Oct. 7	To Cash,	1	11	00	Oct. 4	By Mdse.,.....	1	68	50		
" 20	" Balance,		57	50							
Oct. 20	To my Note,	2	57	50	Oct. 20	By Balance,....		57	50		

NOTE.—An account should be closed when you receive or pay in full.—When you close an account "By Balance," the balance is brought down, and is the beginning of a new account. If closed "To Balance," Credit the new account by that balance, if closed "By Balance" Debit the new account by that balance

While the business continues, no account is closed unless payment is made in full. When one side of an account fills up the whole space and the other side less, place the footings of both columns on parallel lines, and draw a diagonal line across the vacant space.

CASH BOOK.

Dr.				CASH.				Cr.			
1857.					1857.						
Oct. 1	To Cash on hand, per				Oct. 2	Paid Stationery,....		3	00		
" 5	" Inventory,.....	300	00		" 7	" Parker & Hall,...		11	00		
" 8	" H. Long & Bro.,...	4	00		" "	" Insurance,.....		12	00		
" 12	" I. R. Butts,.....	21	50		" "	" Postage,.....		1	00		
" 15	" drawing Deed,...	2	00		" 9	" Charles Chase,...		45	00		
" 21	" H. Long & Bro.,...	50	39		" 15	" dis't on H. Long					
	" John Smith,....	10	00		" "	& Bro's note,...		75			
					" 21	" Freight,.....		3	00		
					" 31	" Rent,.....		24	00		
					" 31	Cash on hand,.....		288	14		
				387	69				387	69	
Nov. 1	To Cash on hand, ..	288	14								

TRIAL BALANCE. — Once in six, or three months, or oftener, each column of the Leger should be added up, and a list of all the accounts, with the differences of the several debits and credits annexed, should be taken from the Leger upon a sheet of paper, in two separate columns. If the books have been kept and posted correctly, the footings of the two columns will agree, if not there must be some mistake, which should be found.

A BALANCE SHEET is usually made out at the close of the year. Commence with the first account in the Leger, and take off all the balances in order, and add to the debtor balances the Stock and Cash on hand, and to the credit balances the original capital (or the balances you owe). Add up each column, subtract one total from the other and the difference shows your loss or gain.

RATES OF POSTAGE IN THE UNITED STATES.

Great care should be used, as well in prepaying the proper amount on letters above the weight of half an ounce as on single letters.

NO. 1. LETTER POSTAGE TO AND FROM ANY PART OF THE U. S.

For each $\frac{1}{2}$ ounce, under 3000 miles,—PREPAID BY POSTAGE STAMPS, 3 cents.

For each $\frac{1}{2}$ ounce over 3000 miles, — PREPAID BY POSTAGE STAMPS, 10 cents.

Fractions over a single rate are charged as one rate. Letters dropped for delivery are charged *one* cent. Letters advertised are charged *one* cent extra.

NO. 2. LETTER POSTAGE TO AND FROM BRITISH NORTH AMERICAN PROVINCES,—(PREPAID OR NOT.)

For each $\frac{1}{2}$ ounce, when not over 3000 miles from the line of crossing, 10 cents.

For each $\frac{1}{2}$ ounce when distance exceeds 3000 miles do. 15 cents.

Newspapers and Periodicals are chargeable with United States postage to and from the lines. To be prepaid when sent and collected when received.

NO. 3. POSTAGE ON PRINTED MATTER, TRANSIENT OR OTHERWISE, IN THE UNITED STATES.

New Law—Prepayment on all Transient Printed Matter Compulsory.

Unsealed circulars, advertisements, business cards, transient newspapers, and every other article of transient printed matter, (except books,) not weighing over three ounces, sent in the mail to any part of the United States, are chargeable with *ONE CENT* postage *EACH*, to be prepaid by postage stamps. Where more than one circular is printed on a sheet, or a circular and letter, each must be charged with a single rate. This applies to lottery and other kindred sheets assuming the form and name of newspapers; and the miscellaneous matter in such sheets must also be charged with one rate. A business card on an unsealed envelope of a circular subjects the entire package to letter postage. Any transient matter, like a circular or handbill, enclosed in or with a periodical or newspaper sent to a subscriber, or to any other person, subjects the whole package to letter postage; and whenever subject to letter postage, from being sealed, or from any cause whatever, all printed matter, without exception, must be prepaid, or excluded from the mail. At offices where postage stamps cannot be procured, postmasters are authorized to receive money in prepayment of postage on transient matter; but they should be careful to keep a supply of stamps on hand.

Three ounces, or less — PREPAID BY POSTAGE STAMPS, 1 cent.

For each additional ounce — PREPAID BY POSTAGE STAMPS, 1 cent.

No. 2.—Small Newspapers and Periodicals, published monthly or oftener, and Pamphlets not containing more than 16 octavo pages, when sent in single packages to one address, and weighing at least 8 ounces—

For eight ounces — PREPAID BY POSTAGE STAMPS, 4 cents.

For each additional ounce — PREPAID BY POSTAGE STAMPS, $\frac{1}{2}$ cent.

No. 3.—Books—bound or unbound—weighing not over 4 pounds.

Books must be put up without a cover or wrapper, or in a cover or wrapper open at the ends or sides, so that their character may be determined without removing the wrapper.

For each ounce — under 3000 miles — PREPAID BY POSTAGE STAMPS, 1 cts.

For each ounce — over 3000 miles — PREPAID BY POSTAGE STAMPS, 2 cents.

Fractions over a single rate are charged as one rate.

An avoirdupois $\frac{1}{2}$ ounce is 218 $\frac{1}{2}$ grains. — 1 Wafer weighs 1 grain. Sealing wax 5 gr. A sheet of foolscap weighs 172 grains; letter-paper, 135. Small envelope, 42 grains; large, 52. You can send a letter 3000 miles for 3 cents, prepaid, containing the sheet of letter-paper, with five bank-notes, sealed with wax; or the letter with three bank-notes in an envelope. Half a sheet of letter-paper, with a half-eagle enclosed under wax. A sheet with one and a half dimes enclosed, secured by wafers. A single sheet of letter-paper, with a quarter-eagle enclosed, secured by wax. One and a half sheets of letter-paper

No. 4.—Small newspapers, pamphlets, &c., when sent in packets of less than eight ounces, must be rated singly.

No. 5.—Newspapers, Periodicals, and all other printed matter must be sent without covers, or in covers or wrappers open at the ends or sides. In case any information shall be asked or communicated, by writing, marks, or signs, on the newspaper or other printed matter, after its publication, or upon the cover, except the name and address of the person to whom it is sent, it will be charged with letter postage. Neither must there be any paper or other thing enclosed in or with such printed paper, &c.

<i>Quarterly Rates of Postage, when paid in advance, on Newspapers & Periodicals sent from the office of publication to actual Subscribers.</i>	Daily.	Six times a week.	Tri-Weekly.	Semi-Weekly.	Weekly.	Semi-Monthly.	Monthly.
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Weekly newspapers (1 copy only) sent to actual subscribers within the county where printed and published.					Free.		
Newspapers and periodicals not exceeding 1½ oz. in weight, when circulated in the state where published.	22½	19½	9½	6½	3½	1½	¾
Newspapers and periodicals of the weight of 3 oz. and under, sent to any part of the United States.	45½	39	19½	13	6½	3	1½
Over 3 and not over 4 ounces.	91	78	39	26	13	6	3
Over 4 and not over 5 ounces.	1-36½	1-17	53½	39	19½	9	4½
Over 5 and not over 6 ounces.	1-82	1-56	78	52	26	12	6
Over 6 and not over 7 ounces.	2-27½	1-95	97½	65	32½	15	7½
Over 7 and not over 8 ounces.	2-73	2-34	1 17	78	39	18	9

1st. When the weight of any publication exceeds eight ounces, the same progressive rate of postage, laid down in the above table, must be charged.

2nd. Publishers of newspapers and periodicals may send to each other from their respective offices of publication, free of postage, one copy of each publication; and may also send to each actual subscriber, enclosed in their publications, bills and receipts for the same, free of postage.

3d. If the publisher of any newspaper or periodical, after being three months previously notified that his publication is not taken out of the office to which it is sent for delivery, continue to forward such publication in the mail, the Postmaster to whose office such publication is sent will dispose of the same for the postage, unless the publisher shall pay it; and whenever any printed matter of any description, received during one quarter of the fiscal year, shall have remained in the office without being called for during the whole of any succeeding quarter, the Postmaster of such office will sell the same and credit the proceeds of such sale in his quarterly accounts in the usual manner.

4th. Quarterly payments in advance may be made either at the mailing office or the office of delivery. When made at the mailing office, satisfactory evidence of such payment must be exhibited to the Postmaster at the office of delivery.

POSTAGES TO FOREIGN COUNTRIES.

NO. 1. RATES OF POSTAGE BETWEEN THE UNITED STATES AND VARIOUS COUNTRIES, BY THE WAY OF ENGLAND.

On all single letters between the United States and the following named places, when sent by the way of *England*, prepayment is optional with the sender.—Five cents additional is charged when sent from or to California and Oregon.

SINGLE LETTERS.

England, (prepayment optional,) -	-	24 cents.
Ireland, " " -	-	24 "
Scotland, " " -	-	24 "

To the following places the United States Postage is 21 Cents a single letter not exceeding $\frac{1}{2}$ ounce in weight, when conveyed by U. S. Packets, and 5 Cents when conveyed by British Packets. The 21 cents is the United States inland and Atlantic sea postage only.

Alexandria, Altona, Anhalt, Austria, Algeria, Baden, Bavaria, Bohemia, Basle, Belgium, Bergen, Bremen, Brunswick, Bruckenburg, Ceylon, Cesme, Corfu, Constantinople, Copenhagen, Cronstadt, Candia, Christiana, Cuxhaven, Dardanelles, Darmstadt, Denmark, East Indies, Florence, France, Frankfort-on-the-Main, Finland, Geneva, Genoa, German States, Gibraltar, Greece, Galacz, Gallipoli, Hamburg, Hanover, Hesse, Hungary, Holstein, Holland, Hong Kong, Italy, (except Lombardy, Modena, Tuscany, and the Papal States,) Ionian Islands, Ibraila, Keil, Sicilies, Larnica, Leghorn, Lippe (all), Lubec, Luxemburg, Levant, Malta, Mecklenburg (both), Meiningen, Modena, Mytilene, Naples, Nassau, Norway, Netherlands, Oldenburgh, Papal States, Parma, Poland, Prussia, Placentia, Reuss, Roman or Papal States, Rhodes, Russia, Sardinia, Salonica, Samsoum, Saxe Saxony, Savona, Schleswig, Sicily, Sweden, Switzerland, Scutari, Smyrna, Turkey, Tenedos, Trebisonde, Tuloza, Tuscany, Varna, Venetian States, Venice, Wallachia, Wurtemberg.

Rates to the following countries, via England, 45 Cents, being full payment.

Ascension, Aden, Africa, Brazil, Buenos Ayres, Cape of Good Hope, Mauritius, Montevideo or any other part of the Republic of Uruguay, Sierra Leone.

Rates to the following places, via England, being full payment.

Canary Islands, 65; Cape de Verde Islands, 65; Heligoland, 33 $\frac{1}{2}$; Madeira (Island of), 65; New South Wales. New Zealand, Van Diemen's Land, Victoria and West Australia, 33; St. Helena, 37.

Rates Via Southampton, England, being full payment.

Aden (Asia), 45; Australia, 33; Azores, 63; Bourbon and Borneo, 33; China, 33; Egypt (except Alexandria), 33; Greece, 57; Java, 33; Labuan, 33; Majorca, 73; Manila, 33; Mauritius, 45; Minorca, 73; Moluccas (India), 33; Philippine Islands, 33; Portugal, 63; Spain, 73; Syria, 57; Sumatra, &c., 41.

Rates Via Marseilles, France, being full payment.

Aden, 65; Australia, 39; Beyrout, 57; Bourbon and Borneo, 49; China, 49; Egypt (except Alexandria), 39; Greece, 21; Java, 49; Marseilles, 49; Labuan, Manila, 49; Mauritius, 5; Minorca, 37; Moluccas, 49; Philippine Islands, 49; Spain, 37; Syria (by French packet), 51; Sumatra, 49; Tunis, 51.

Postage of Newspapers to or from G. Britain and Ireland, or to or from foreign countries through Great Britain and Ireland, 2 cents — to be prepaid.

NOTE.—In computing postage to the countries named above, the British and sea postage, and U. S., are rated by the $\frac{1}{2}$ ounce for the single letter—while the foreign postage is rated by the $\frac{1}{2}$ ounce. The foreign postage, only, being doubled for each $\frac{1}{2}$ ounce.

NO. 2. RATES OF POSTAGE BETWEEN THE UNITED STATES AND THE NORTH OF EUROPE, &c.

In Prussian closed Mail, by United States and British Packets.

Rate 30 Cents for single Letter of $\frac{1}{2}$ ounce, being the full payment from the port of sailing. Prepayment optional, except where noticed.

Anhalt; Austria; Baden; Bavaria; Bohemia; Bremen; Brunswick; Bruckenburg; Cuxhaven; Darmstadt; Frankfort-on-the-Main; German States; Hamburg; Hanover; Hesse; Hungary; Sicilies; Lippe; Lubec; Luxemburg; Levant (prepaid); Mecklenburg; do. Strilitz; Meiningen; Naples, (prepaid); Nassau; Netherlands; Oldenburgh; Prussia; Placentia; Reuss; Saxe; Saxony; Schleswig; Sicily (prepaid); Scutari (prepaid); Turkey in Europe (prepaid); Venetian States; Wallachia (prepaid); Wurtemberg.

And to other places at the following Rates:

Alexandria, Egypt, (prepaid), Hong Kong (prepaid), Genoa, Ionian Islands, Sardinia (prepaid), Savona (prepaid), 38. Altona 33; Italy, [except Lombardy, Tuscany, the Papal States, and Venice,] (prepaid), 33; Lombardy, Modena, and Parma, 33. Basle, Copenhagen, Denmark, Florence, Geneva, Holstein, Kiel, Leghorn, Papal States, Switzerland, Tuscany, and Venice, 35. Bergen, Christiana, and Norway, 46. Beyrout, Constantinople, Candia, Cesme, Dardanelles, Galacz, Gallipoli, Ibraila, Larnica, Rhodes, Salonica, Samsoum, Smyrna, Tenedos, Trebisonde, Tuloza, Varna, 40. Corfu,

Cronstadt, Finland, Poland, and Russia, 37. China, (prepaid), 62. East Indies, (prepaid), 70. Greece and Sweden, 42.

Newspapers in Prussian Line, 6 cents, (prepaid.)

NO. 3. RATES OF POSTAGE BY THE BREMEN LINE.

Being the full payment to destination. — Prepayment optional.

Altona, Austria, Bavaria, Brunswick, Hamburg, Hanover, Hungary, Lubec, Mecklenberg (Schwerin), Mecklenburgh (Strilitz), Prussia, and Saxony, 15. Alexandria (prepaid), Corfu (prepaid), Malta (prepaid), Wallacha (prepaid), 30. Anhalt (all), Baden, Bohemia, Bruckenburg, Cuxhaven, Darmstadt, Frankfurt-on-the-main, German States, Hessa, Lippe, Luxemburg, Levant, Meiningen, Nassau, Reuss, Saxe, Wurtemberg, 22. Oldenburg, 13. Constantinople, Candia, Cesme, Dardanelles, Greece, Italy (except Venice), Ibraila, Leghorn, Lombardy, Mytilene, and Rhodes, Sweden, Tenedos, Tunis, Tuloza, Varna, 33. Bergen, Christiana, and Norway, 37. Bremen, 10. Copenhagen, Denmark, and Schleswig, 27. Basle, Geneva, Netherlands, and Switzerland, 25. Holstein, Keil, 23. Cronstadt, Finland, Poland, and Russia, 29. Genoa, 38.

Newspapers in the Bremen Line, 3 cents, (prepaid.)

NO. 4. RATES OF POSTAGE TO HAVRE (FRANCE).

Havre, (France,) or any other port or place on the coast of France, Germany, or any other point in Europe, where the U. States steam packets touch, except Great Britain and Ireland, the United States Postage (20 cents) is to be prepaid. Newspapers, 2 cents — prepaid.

NO. 5. SPANISH AND BRITISH WEST INDIA ISLANDS.

Havana.—Antigua, Barbadoes, Bahamas, Berbice, Cariacou, Demerara, Dominica, Essiquibo, Grenada, Honduras, Jamaica, Montserrat, Nevis, St. Kitts, St. Lucia, St. Vincent, Tobago, Tortola, Trinidad, and Turks Island. Single letters 10 cents—if distance from mailing office does not exceed 2,500 miles; and 20 cents—where distance exceeds 2,500 miles—prepaid. Postage of Newspapers, 2 cents — prepaid.

West India Islands (not British,) and ports or points in the Gulf of Mexico, or places on the Atlantic coast of *South America*, not in British possession, 34 cents, where distance from mailing office does not exceed 2,500 miles;—and 44 cents, where it exceeds 2,500 miles. To be prepaid — being the United States and British Postage. — Postage of Newspapers, 6 cents — prepaid — when sent from, and 2 cents when received in, the U. S.

To ports and places in Venezuela, 34 cents, prepaid.

Southwest Coast of South America and the following places:—Bogota, New Granada, 18 cents, on letters sent, prepaid.—Buenaventura, New Granada, 10 cents on letters received.—Payta, Lambayeque, Huanchaco, Casma, Huacho, and Callao, (Peru,) 22 cents on letters sent, prepaid.—Lima, Pisco, Islay, Arica and Iquique, (Peru,) 10 cents on letters received.—Guayaquil, Quito, (Ecuador,) Cobija, La Paez, (Bolivia,) and Copiapo, (Chili,) 34 cents on letters sent, prepaid.—Huasco, Coquimbo, Valparaiso, and St. Iago, (Chili,) 10 cents on letters received. Newspapers 6 cents, prepaid.

To ports and places in *Peru*, except the above, 32 cents for letters, and 8 cents for newspapers, (prepaid.)

To ports and places in Guatemala, 34 cents, prepaid.

But to the following places the postage is 20 cents from mailing office, if distance exceeds 2,500 miles, and 10 cents when the distance is less — prepayment required—*Mexico, Acapulco, Panama, Nicaragua, Chagres, and Mazatlan*. Postage of Newspapers, U. S. only, 2 cents — prepaid.

NO. 6. PAMPHLETS, &c., TO GREAT BRITAIN AND IRELAND.

U. S. Postage, is 2 cents for each pamphlet, not exceeding 2 ounces in weight, and 4 cents for each extra ounce, *prepaid*. Subject to the same postage in Great Britain. No pamphlet can be sent exceeding *eight* ounces in weight, and no periodical over 16, without being subject to letter postage.

When sent to or received from foreign countries, WITHOUT PASSING THROUGH THE UNITED KINGDOM, they will be chargeable with the regular United States rates, to be prepaid when sent, and collected when received.

Newspapers and Periodicals to Foreign Countries (particularly to the Continent of Europe) must be sent in narrow bands, open at the sides or ends.

TRADER'S GUIDE

OR,

LAWS OF TRADE.

THE
TRADER'S GUIDE,
AND
BUSINESS MAN'S LEGAL COMPANION,

CONTAINING

THE LAWS OF TRADE; OF BILLS OF EXCHANGE AND
NOTES; OF CONTRACTS AND AGREEMENTS; THE
MODE OF DOING BUSINESS WITH BANKS;

AND THE

REMEDIES FOR THE RECOVERY OF DEBTS

In all the States of the Union :

DEFENCE OF DEBTOR ; — FORMS OF AFFIDAVITS, AND DEPO-
SITIONS ; — THE LAWS IN RELATION TO TRUSTEE PROCESS,
LIMITATION OF ACTIONS, INTEREST, USURY, INSOLVENCY,
PAYMENTS, ACKNOWLEDGMENT OF DEBT, ARBITRATION BY
REFERENCE, REPLEVIN, SET-OFF, HUSBAND'S AND WIFE'S
INTEREST IN REAL AND PERSONAL ESTATE, AND RIGHTS OF
MARRIED WOMEN IN RELATION TO PROPERTY, PROTESTS OF
BILLS AND NOTES, LIEN ON BUILDINGS, VESSELS, &c.

BY I. R. BUTTS,

ASSISTED BY MEMBERS OF THE BAR.

PUBLISHED BY

I. R. BUTTS, No. 2 SCHOOL STREET, BOSTON.

RECOMMENDATIONS.

LETTER FROM THE HON. AMASA WALKER, SECRETARY OF STATE OF MASSACHUSETTS.

Dear Sir,—My attention has been recently called to your little work, entitled "THE TRADER'S GUIDE." The impression it has made on my mind is, that had I been in possession of such a Work, when I was a business man, it would have been of great use to me. I can now see that I groped on blindly, and encountered many losses and embarrassments, which an acquaintance with your book would have saved me.

It certainly, I think, ought to be in the hands of every person engaged in trade, and I commend it to the attention of all such. Clerks who wish to qualify themselves for usefulness to their employers, and for success when they shall undertake business for themselves, would, I am sure, do well to make themselves familiar with "THE TRADER'S GUIDE."

I am, very respectfully, your obedient servant,

AMASA WALKER.

LETTER FROM CAPT. H. W. BENHEM, U. S. A.

The undersigned, having examined the "BUSINESS MAN'S ASSISTANT" and the "TRADER'S GUIDE," finds them valuable auxiliaries in Business Transactions. They appear to condense more information that is useful and important to business men, than any other book I have ever met with.

H. W. BENHEM.

Entered, according to Act of Congress, in the year 1851,

By I. R. BUTTS,

in the Clerk's office, of the District Court of Massachusetts.

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PART I.

LAW S OF TRADE.

LEGALITY OF BOOK ACCOUNTS.

IN most of the States the original entries in shop books, are competent evidence, with the oath of the party, to prove the items charged.* In some states the oath of the clerk who made the entry, is also required.

If the books, on being submitted to the inspection of the court, do not appear to contain the first entries, or charges, made at or near the time of the transactions to be proved, and to have been honestly and fairly kept, without erasures, or interlineations, they are excluded.†

Where entries were first made on a slate, or cart, and immediately afterwards transferred into a book, kept in the ledger form, such book has been admitted as competent evidence to prove the charges; though regard must be had to the education of the party, and the nature of his employment.

An account, purporting to be drawn out by the party himself from his original and daily minutes, is not admissible in evidence, though the book containing such statement should be accidentally destroyed; unless it could be proved that the items of the amount drawn out had actually existed in the party's books.

If the party is dead, the books may be offered by the executor or administrator.

If the clerk who made the entries is dead or insane, the book is admissible upon proving his handwriting.

* The following States admit both entry and oath:— Maine; Massachusetts; Connecticut; New Hampshire; Illinois; Pennsylvania; South Carolina; North Carolina, (where demand does not exceed \$60); Delaware; Maryland, (where demand does not exceed \$26.66); Tennessee; Ohio, (if not more than 18 months' standing); Rhode Island; Vermont; Wisconsin. Evidence of the original entry, and proof of delivery of goods is only required in New York, New Jersey, Georgia, &c.

† *Questions usually required to be answered under oath.*—Is this your book, and the method in which you keep your accounts? Did you make the charges, now in dispute, at the time they purport to have been made? Are they just and true? Have you received pay for them, or any part? If so, how much? An answer in the affirmative, *under oath*, to the preceding questions, (the last only excepted,) is generally all that is required to substantiate a claim.

When the day-book contains marks which show that the items have been transferred to a ledger, the ledger must be produced.

In Massachusetts, payments of sums of money over forty shillings [\$6.66 $\frac{2}{3}$] cannot be proved by the books. This is an important fact, not generally known, as it not unfrequently happens that a person pays money to his workmen taking no receipt therefor.

SETTLEMENT OF ACCOUNTS.—It is usual to prefix the initials E. & O. E. (for *errors and omissions excepted*) to the signature to accounts; but the omission of those letters forms no bar to the subsequent correction of errors. The settlement and discharge of an account is no bar to a claim for any other demand, not included in the settled account. It may be impeached by proof of unfairness, mistake, or fraud.

LEGALITY OF RECEIPTS.

When a receipt is given for money paid on a bond, note, &c., the amount should be indorsed on the same.

A receipt in "full of all demands" is conclusive evidence, when given under a knowledge of all the circumstances between the parties; but is not so, when given without such knowledge; and may be avoided by the party signing it, showing a mistake, or error therein, or that it was given under misrepresentation. A receipt in full of all accounts cuts off accounts only, but a receipt "in full of all demands," is held to discharge all debts, except such as are on specialty, as bonds, bills, &c. which may be discharged by a release.

FORMS OF RECEIPTS.

New York, Jan. 1, 1858. Received of MESSRS. JOHNSON & WARD five hundred dollars, on account.

\$500.

— JOHN S. WILLIAMS.

New Bedford, Jan. 1, 1858. Received of HORACE WHEELER, by the hand of JOHN HOBBS, twenty-five dollars, for books sold and delivered to said WHEELER.

— THOMAS S. WALES.

New York, Jan. 1, 1858. Received of PETER LAURIE, one hundred dollars, being one quarter's rent due this day, for my dwelling house, No. 12 State Street, now occupied by said LAURIE.

\$100.

— ABRAHAM HEWS.

Philadelphia, Jan. 1, 1858. Received of JAMES WARREN three hundred dollars in full of account to date.

\$300.

JAMES MADISON.

Baltimore, Jan. 1, 1858. Received of JOHN BARNES two hundred dollars, in full for balance due on account.

\$200.

JOHN LINCOLN.

Boston, Jan. 1, 1858. JOHN L. LINCOLN has this day deposited in this Bank, to his credit, five hundred dollars.

Traders Bank, Dec. 31, 1857.

\$500.

JEREMIAH GORE, *Cashier.*

Boston, Jan. 1, 1858. Received of I. R. BUTTS, one hundred dollars, which amount I promise to endorse on said Butts' note for five hundred and sixty-four dollars, dated January 1, 1857, and payable to me or order, on demand, with interest, *on surrender* to me of this receipt—said endorsement to be as of this date.

\$100.

JOHN BROWN.

LEGALITY OF RELEASES.

A RELEASE is an instrument under seal, whereby a person discharges the right, or action he has, or may claim, against another, or his lands, &c.

By a release of all *demands*, are barred all rights and titles to land, rights of entry, rent charges and arrearages of rent, rights to personal property out of possession, conditions before and after breach, warranties, recognizances, obligations, covenants broken, debts, contracts (except those which are to be performed on a future contingency) duties, actions real, personal and mixed, including writs of entry, *sci. fa.* and appeals, judgments and executions.—*Shep. Touch.* 343-4.

If two persons are jointly bound, a release to one will discharge the other. A release of one partner is a release of all. A release of one of several joint debtors is a release of all.

No particular *form* of words is necessary to constitute a valid release; but any words which evince an evident intention to renounce the claim upon, or to discharge the debtor, are sufficient. *Chitty on Con.*

Short Form of Release.

Boston, Jan. 1, 1858. I A. B., in consideration of — dollars to me paid by C. D., do hereby release said C. D., from all notes, accounts, debts, dues, or demands of any name or nature I have or can claim against him. In witness whereof, I have, &c.

In presence of

A. B. (L. S.)

NOTE.—See "Business Man's Assistant," page 63, for a General Form of Release, Release of Contract, Lease, Note, Bond, Dower, and Mortgage.

MODE OF DOING BUSINESS WITH BANKS.

EVERY person doing business would find it to his advantage to keep an account with some Bank.

1st. Because his money will be lodged in a place of security. 2d. He will save time, for when he receives money he can deposite it in bank, and when he pays it away he can draw checks for the amount. 3d. By depositing small sums he enables the bank to render facilities in the way of discounts, of larger amount than any one person could command by hoarding his funds instead of banking them. 4th. He can leave his notes with the bank for collection, and thus be relieved from the anxiety of giving notice to indorsers. 5th. He can make his own notes and bills payable at his own bank. 6th. In counting money, he runs some risk of making an error, which he avoids when he draws a check ; or, at least, if an error occur, it can be easily rectified when his checks are returned at the close of the month ; for they show at once the amount paid ; and his check-book, if correctly kept, shows to whom paid ; or his check may be so written as to show of itself.

When a person opens an account with a bank, he receives a small account book, called a Deposite-book ; but he should not depend entirely on this book, but keep an account of his deposits and receipts in his own check-book. This Deposite-book he should send to the bank, not only when he makes a deposite, but also at the close of each month, to be balanced.

The depositor should never overdraw ; but if he expects accommodations, he will find that keeping a reasonable balance in bank will speak volumes in his favor. When he offers a note or bill for discount, the request should be made in writing, and contain the *names of promiser and indorsers*, (with their *places of residence*, if not stated in the note) *amount due on note*, and the *time it has to run*. This memorandum should be addressed to the Cashier, and is usually left with the discount clerk. When a note is discounted, the interest, for the time the note has to run, with three days' grace, is taken in advance.

When a person makes a deposite of bank bills, he should enclose the country bills in an envelope, with the *name of the depositor, foreign, and amount*, written thereon; but the city bills may be presented loose. He will also write the *name of the depositor, date, and character of the deposite*, on a slip of paper, as follows:

DEPOSITED IN THE TRADERS BANK,— BY I. R. BATES.

Boston, February 22, 1858.

Boston,	\$150	
Foreign,	300	
Specie,	150	
Check, of A. B.,	50	
“ of C. D.,	50	
		\$700

This he gives to the teller to be filed. This course saves time and prevents mistakes. (The above rule is peculiar to the Boston banks, and cities in the vicinity.)

When a draft is sent to a distant place for acceptance, notice should be sent to the person on whom it is drawn, so as to precede its arrival.

When money is to be transmitted by mail to a distant place, it would be safer and more convenient to send a *draft, check, or certificate of deposite*. Suppose that H. Long & Bro., of New York, owe \$100 to I. R. Bates, of Boston; they procure a *draft, or check*, of some bank, or broker, of New York, upon a bank, or broker, in Boston, payable to I. R. Bates, *or order*. This draft they enclose in an envelope, directed to I. R. Bates, who, upon receiving it, indorses it and collects the money. It is safer to send a draft, or check, than bank bills; for should the draft be lost or stolen, it cannot be collected until the person to whom it is made payable has *indorsed it*; and the only trouble would be to procure another draft, or check. So, if the person to whom it was sent should deny having received it, the books of the bank, or broker, would be evidence of the payment of the money.

CERTIFICATE OF DEPOSITE.

\$100.

TRADESMANS BANK.

No. 20.

New York, February 20, 1858.

H. Long & Brother have this day deposited in this Bank, one hundred dollars, to the credit, and subject to the order of, I. R. Bates, on return of this Certificate.

JOHN BANKER, Cashier.

NOTES AND BILLS.

I.—DESCRIPTION OF A BILL OF EXCHANGE AND NOTE

A **BILL OF EXCHANGE** is a written order or request, and a **PROMISSORY NOTE** a written promise, by one person to another, for the payment of money, absolutely, and at all events. No set form of words is required. A promise to deliver, or to be accountable, or to be responsible for so much money, is a good bill or note; *but it must be exclusively and absolutely for the payment of money.*

II.—PARTIES TO A BILL OR NOTE.

A. who makes a bill is called the “*drawer*,” B. to whom it is addressed, the “*drawee*,” and C. in whose favor it is made, the “*payee*.” If the *drawee* accept the bill, he is termed the “*acceptor*,” when a bill is indorsed, the person indorsing is called the “*indorser*,” the person to whom it is indorsed, the “*indorsee*.”

FORMS OF INDORSEMENT OF BILLS AND NOTES.

1. First Indorsement in blank, — by payee :
“*JOHN WILLIAMS.*”

2. Indorsement without recourse, or, where the Indorser would avoid all liability :
“*JOHN WILLIAMS — without recourse.*”

3. Special Indorsement in favor of a particular person :
“*Pay Wm. Little, or order, — JOHN WILLIAMS.*”

4. Indorsement of an Agent :
“*As Agent of Wm. Little, — JOHN WILLIAMS.*”

5. Indorsement in favor of the Indorser :
“*Pay Messrs. Adams & Co., for my account, — JOHN WILLIAMS.*”

6. Special Indorsement :
“*Pay to the order of John K. Hall, Esq., Cashier of the Bank of North America, — JOHN WILLIAMS.*”

The person who makes a note is called the “*maker*,” and the person to whom it is payable, the “*payee*,” and the terms “*indorser*,” and “*indorsee*,” are used as in bills.

III.—FORMS OF NOTES AND DUE BILLS.

The following are the usual forms of Negotiable Promissory Notes.

\$700.

Portland, Jan. 1, 1858.

Six months after date, I promise to pay JOHN SANDS, or order, seven hundred dollars, at the Traders Bank, Boston, value received.

PETER HOBBS.

\$300.

Cincinnati, Jan. 1, 1858.

On demand, I promise to pay WILLIAM HOCKIE, or order, three hundred dollars, with interest, value received.

JAMES LEWIS.

Bills and notes containing a memorandum of the deposit of collateral security, such as a deposit of stocks, &c., are valid.

\$600.

Boston, Jan. 1, 1858.

Thirty days after date, I promise to pay I. R. MEARS, or order, six hundred dollars, for value received: I having deposited with him as collateral security, (with authority to sell the same on the non-performance of this promise,) seven shares of the stock of the Traders Bank, in Boston.

JAMES THOMAS.

Bills of exchange and notes of hand payable by instalments, are valid; and suit may be commenced on failure of the first payment.

\$800.

Portsmouth Jan. 1, 1858.

Value received I promise to pay to the order of JOHN WARD, eight hundred dollars as follows:—two hundred dollars in six months; two hundred dollars in nine months; four hundred dollars in twelve months from the date hereof, with interest on all said sums.

ANDREW JOHNSON.

A note of hand payable to the drawer's own order, is made negotiable by his endorsement.

\$200.

Portland, Jan. 1, 1858.

Three months after date I promise to pay to my own order two hundred dollars, value received.

I. R. BUTTS.

Bills of exchange or notes of hand which are not negotiable (not being payable to order or bearer) are perfectly valid between the original parties.

\$100.

New York, Jan. 1, 1858.

Four months from date I promise to pay Messrs. H. LONG & BROTHER, one hundred dollars, value received.

HENRY WILLIAMS.

A note beginning "I promise to pay," and signed by two or more persons, is a *several* as well as a *joint* note, and the parties may be sued jointly or separately; so, if the note begin, "We jointly and severally promise to pay," but when a promissory note is made by several, thus, "We promise to pay," it is a joint note only.

\$500.

Boston, Jan. 1, 1858.

For value received, we promise to pay JOHN WILLIAMS, or bearer, five hundred dollars, on demand, with interest.

HORACE MANN,
JOHN STUBBS.

Note—with Power of Attorney.

\$500.

Cincinnati, Jan. 1, 1858.

Ninety days after date I promise to pay to the order of THOMAS ROOT, five hundred dollars with interest, value received. And in case of default of my payment of the principal and interest aforesaid, with punctuality, I hereby empower THOMAS ROOT, or any Attorney at Law to be appointed by him, to appear for me, and in my name confess judgment before any Court of competent jurisdiction in the State of —, for the above sum, interest, and costs, with release of errors waiving the right of appeal.

Witness my hand and seal this first day of January, A. D. 1858.

Attest, C. D.

CHARLES HOPE, (L. S.)

DUE BILLS.

New York, Jan. 1, 1858. Due on demand, to I. R. BUTTS, one hundred dollars, value received.

THOMAS FORD.

Boston, Jan. 1, 1858.

Borrowed and received of JOHN BROWN, two hundred dollars, which I promise to pay to him, or order, on demand, with interest.

JAMES LONG.

Due on demand, to WILLIAM ROPES, or bearer, two hundred dollars, to be paid in goods, Jan. 1, 1858, value received.

JAMES LORING.

IV.—FORMS OF FOREIGN AND INLAND BILLS.

Foreign bills are drawn in sets; that is, copies of the bills are made on separate pieces of paper, each part containing a condition that it shall continue payable only as long as the others remain unpaid.

*Foreign Bill of Exchange.**Exchange for £500.**New York, Jan. 1, 1858.*

Twenty days after sight of this *first* of exchange, (*second* and *third* of the same tenor and date unpaid) pay to the order of JAMES HEATH, in London, five hundred pounds sterling, value received, and charge the same to account of

WILLIAM SMITH.

To Messrs. Bates, Baring & Co., London.

Inland Bill of Exchange, or Draft.

\$400.

Boston, Jan. 1, 1858.

At sight, pay to the order of JOHN WILDER four hundred dollars, value received, and charge the same to account of yours, &c.

JOHN SCREW.

To MR. JOHN HOBBS, *New Orleans.*

\$300.

New York, Jan. 1, 1858.

Sixty days after date, pay to the order of HORACE TICKNOR, three hundred dollars, value received, and charge the same to our account.

MEARS & BLISS,

To MR. WILLIAM WILLIAMS, *Boston.*

\$200.

New Orleans, Jan. 1, 1858.

Ninety days after date, pay to the order of JEREMIAH GORE, Esq., at the Traders Bank, Boston, Mass., two hundred dollars, value received, and charge the same to the account of JOHN DEMPSTER, Esq., as per advice—or, without further advice.

JONES & WHEELER.

To Messrs. HARTT & WEEMS, *Boston, Mass.*

Note.—In *Pennsylvania* all Bills of Exchange, Promissory Notes, Due Bills, or any other instrument in the nature thereof, must contain the names of the places of business or residences of all the parties; and when such places of business or residences are omitted, demand of acceptance, protest, &c., may be given at any time before maturity, as well as protest and non-payment of the same after maturity. In all such cases of omissions, such Notes, &c., shall be held to be payable and protestable at the place where they are deposited for collection, and Bills of Exchange, Drafts, Checks or other securities shall be held to be payable and protestable at the place where they are addressed to the drawer.—Law of *Pennsylvania*, 1849. Notes bearing date in the city or county of Philadelphia, must contain the words “without defalcation, or set-off.”

In *Missouri*, Notes, which express on their face to be for “value received, negotiable and payable *without defalcation*,” are rendered negotiable in like manner as inland bills of exchange.

In *Indiana*, notes are written “without any relief whatever from valuation or appraisement laws.”

In *Ohio*, a Promissory note payable to a person, or bearer, is negotiable by delivery, without endorsement. The mere endorsement upon a note of a stranger's name in blank, is *prima facie* evidence of *guaranty*. To charge such a person as *maker*, there must be proof that his endorsement was made at the time of the execution by the other party; or, if afterwards that it was in pursuance of an agreement or intention, that he should become responsible from the date of the execution, which intention may be proved by parol evidence.

If a Promissory Note be signed by one of the partners on a contract, on account of the firm, in this form, A. B. for A. B. & Co.,—the firm will be liable

A memorandum written on a Note, in these words, “for value received I hereby acknowledge this Note to be due, and promise to pay the same on demand,” and signed in the presence of an attesting witness, prevents the operation of the statute of limitations.

V.—REQUISITES OF A BILL OR NOTE.

The two principal requisites to a good bill are, first, that it be payable *at all events*, not dependent on any contingency, nor payable out of a particular fund; and, secondly, that it be for the *payment of money only*, and not for the payment of money and the performance of some other act, as the delivery of a horse, or the like.*

If, however, the event on which the payment is to depend must inevitably happen, it is of no importance how long the payment is deferred. Therefore, if a bill be drawn, payable six weeks after the death of the drawer's father, it is valid and negotiable.

The *date of a Bill or Note* ought to be clearly expressed, but it is not essential to the validity of the bill or note; for, when the date has been omitted, it will be intended to bear date on the day when it was made.

The *negotiability* of a bill or note depends on the insertion of sufficient words of transfer. The modes of making a bill transferable are by making it payable to A or order, or to A or bearer, or to bearer generally.

VI.—CONSIDERATION OF A BILL OR NOTE.

It is usual to insert the words *value received*, in a bill or note. Banks do not consider a note negotiable unless it contains the words *value received*.

In the case of *negotiable* notes, and bills of exchange, the law always presumes them to be founded upon a valid consideration, and no *proof* of a consideration is required. As between the *immediate* parties to a bill or note, the consideration may, however, be always inquired into.

Thus, in an action by the drawer against the acceptor, or by the payee against the maker, the acceptor or the maker may show that the bill was accepted, or the

*An agreement in writing, by which the subscriber to it promised to pay another a sum of money on demand, with interest, and added, "but no demand is to be made as long as the interest is paid," is not a Note.

A memorandum at the foot of a Promissory Note; in these words, "I do hereby obligate myself that the above Note shall be paid in three years from the 4th day of June, 1850," made in consideration that the payee will delay the payment until two years after the maturity of the note, is an *original agreement*, and demand and notice is not necessary to charge the signer of the memorandum.

note made, without any consideration, and it will be a good defence to the action.

A want of sufficient consideration may be insisted on in defence to an action on a bill; and when the bill is for *accommodation*, and the holder has given value only for a part of that amount, he cannot recover on the bill beyond that sum.

So, in an action by an indorsee against the person indorsing the note to him, that person may show that the note was indorsed to such indorsee without any consideration, and it will be a good defence.

But where the holder of a bill or note received it innocently, in the course of business, for a valuable consideration, and before it was due, he may collect it of any of the prior parties to the bill or note, notwithstanding it may have been originally issued without any consideration, or fraudulently, or that no consideration had passed between the prior indorsers, or that the prior indorsements were illegal, or though it may have come to him from a person who had stolen or robbed it from the true owner. Where, however, it is proved that a note got into circulation fraudulently, the holder will be obliged to show how he came by it, and that he gave a valuable consideration for it.

If an indorsee receive a note under circumstances which may reasonably excite suspicion that it was not good, he ought, before he takes it, to inquire into the validity of the note, and if he does not, he takes it subject to any legal defence which might be made against a recovery by the promisee.

The bill may be void if the consideration given has been made illegal by statute; as for money won at *gaming*, or for money bet, and in some States, on a *usurious* contract. But, with respect to gaming, it is held that a bill founded on a gambling transaction is good in the hands of a *bonâ fide* holder; and a bill or note, though founded upon a usurious contract, does not, in some states, vitiate the same in the hands of a *bonâ fide* holder, not knowing the usurious contract.

VII.—EFFECT OF TAKING A BILL AFTER IT IS DUE.

Where a party takes a note, even for value, after it has been dishonored, or is overdue, he takes it sub-

ject to all the equities which properly attach thereto between the antecedent parties.

Thus, in an action by the indorsee of a note overdue against the maker, the maker may have the benefit of a set-off against the payee, which accrued before notice to him of the transfer. So he may prove payments in part, or in whole, before the indorsement. So he may prove fraud in its inception, or want for a failure of consideration, or that it was given for an illegal consideration, &c.

VIII.—PRESENTMENT OF BILL FOR ACCEPTANCE.

Bills payable at sight, or at so many days *after* sight, or *after* demand must be presented to the drawee for acceptance; otherwise the time of payment would never arrive. But bills payable *on* demand, or payable at a certain number of days after date, or after any other certain event, need not be presented for *acceptance* at all; but only for *payment*. It is, however, certainly advisable in all cases to endeavor to get the bill accepted. And though the owner is not bound to present the bill payable *at a day certain*, for acceptance before the day, the *agent* employed to collect the bill, or to get it accepted and paid, must act with due diligence to have the bill *accepted* as well as paid.

A bill payable at sight, or so many days after sight, as well as a bill payable on demand, must be presented in a *reasonable* time, or the holder will have to bear the loss proceeding from his default.

In all cases, where a bill is presented, and acceptance is refused, it is dishonored, and notice must be given to the drawer and indorsers in order to charge them; and it makes no difference in this respect, whether the bill be payable at sight, or at a day certain.

IX.—PRESENTMENT FOR ACCEPTANCE, BY WHOM, WHERE, AND TO WHOM MADE.

In general, bills should be presented by the holder or his authorized agent. But though the drawee may not be bound to accept a bill presented by a person not having proper authority to hold the bill, yet if he does accept it, such acceptance will inure to the benefit of the true holder.

A bill should be presented for *acceptance* at the residence or usual place of business of the drawee, without regard to the place where it is drawn *payable*, because the former is supposed to be the place where he is to be found to accept, and the place of payment is not material until after acceptance. If the drawee is not to be found at the place to which the bill is directed, he having never lived there, or having removed from thence, the holder should endeavor to ascertain the actual domicil of the drawee, and present the bill at that place. If the holder is unsuccessful in his inquiries, he may protest the bill as dishonored.

The absence from his home, of the drawee of a bill payable at a time certain after date, when the holder of the bill or his agent calls with it for *acceptance*, is not a refusal *to accept*, which requires the holder to give notice to the drawer and indorsers; although such absence, *when the bill is due*, is a refusal *to pay*, and authorizes a protest.

The presentment should be to the drawee himself, or to his authorized agent; and if he refuse, and the bill has been addressed to another person, then presentment must be made to that person; otherwise the drawer or indorsers will not be chargeable. If the bill has been addressed to two or more persons not in partnership, it is said that it must be presented to each.

If the drawee has left the country, it will be sufficient to present the bill at his house, unless he has a known agent, when it should be presented to him. If on presentment it appear that the drawee is dead, the holder should inquire after his personal representative, and, if he live within a reasonable distance, should present the bill to him.

Presentment should in all cases be made during the usual hours of business; and it should not be made on days set apart by the laws of the country for religious or public purposes. The drawee should accept or refuse a bill as soon as it is presented to him; but if he does not determine immediately, it is usual to leave it with him twenty-four hours to consider whether he will accept it or not. But in this the holder may use his own discretion.

It is not incumbent on the indorser to inform the holder where the maker is to be found.

X.—OF THE ACCEPTANCE.

The acceptance may be verbal, or it may be written, and it may be general or special. If a bill comes into the hands of a person with verbal acceptance, and he takes it in ignorance of such acceptance, he may avail himself of it afterwards.

An *absolute* acceptance is an engagement to pay the bill according to its tenor, which is done by the drawee writing "*Accepted*," and subscribing his name at the bottom or across the bill. If a bill is made payable *after sight*, the date of acceptance should appear thus, "*Accepted, A. B., April 20, 1857.*"

Any acceptance varying the absolute terms of the bill, either in the sum, the time, the place, or the mode of payment, is a *special* or *conditional acceptance*, which the holder is not bound to receive; but if he does receive it, the acceptor is liable only according to the terms of his acceptance.

The holder, as just stated, is not bound to take a qualified acceptance, but is entitled to have the bill accepted absolutely and unconditionally, as it is drawn. He may, however, at his own risk, take a special acceptance; but he ought to give immediate notice to all the parties, and if he omits so to do he discharges them; and it would seem, that if he wished to hold the other parties to the bill, he should have it protested as dishonored, unless they assent to the conditional acceptance.

A promise to accept a bill not yet drawn, shown to a third person, who, *upon the faith of such promise*, takes it for a valuable consideration, is in law an acceptance of such bill, when drawn; provided in the letter in which the promise is made, the bill to be drawn is described in terms not to be mistaken, and so as to distinguish it from all others; and provided the bill is drawn within a reasonable time after such promise. (2 Gall. 233; 2 Wheat. 66; 1 Story, 22.)

Any act of the drawee, which demonstrates an intention to comply with the request of the drawer, will

amount to an acceptance. An expression "*leave the bill, and I will accept it*," or a direction to a third person to pay the bill "*written*" thereon, is a sufficient acceptance. A verbal promise that, "*if the bill come back, he would pay it*," was held a good acceptance.

An *implied* acceptance may be inferred from the drawee keeping the bill a great length of time, or any other act which induces the holder not to protest it, or to consider it as accepted.

XI.—NON-ACCEPTANCE—WHEN NOTICE IS NECESSARY.

Where the drawee refuses to accept a bill, the holder should give immediate notice of the fact to the drawer and indorsers, or such of them as he intends to look to for payment. The rules as to the form, time of notice, &c., apply as in the case of notice for non-payment.

In what cases it is necessary to have the bill protested, will be stated hereafter.

The drawer of a bill may be immediately sued after notice of non-acceptance. If, however, the bill be presented and accepted, the holder obtains the additional security of the drawee.

XII.—LIABILITY OF ACCEPTOR.

An absolute acceptance is an engagement by the acceptor to pay according to the tenor of the bill; and a conditional or partial one, to pay according to the tenor of the acceptance.

The drawee, by accepting a bill, admits the genuineness of the drawer's signature. If, therefore, the drawee accepts a forged bill, or a bill with a larger amount than that fixed by the real drawer, he will nevertheless be liable to pay the bonâ fide holder, and will have no claim upon the supposed drawer. Every drawee ought therefore to be careful, before accepting, to ascertain that the signature of the drawer is genuine, and that there has not been substituted for payment a larger sum than that really required by the drawer.

But the drawee, by accepting, does not admit the genuineness of the signatures of the indorsers; and the holder, in order to recover of the acceptor, must be

able to prove that the signatures of the indorsers, through whom he claims, are genuine.

The acceptor of a bill is the principal debtor, and the drawer and indorsers are to be regarded as sureties; and nothing will discharge the acceptor, but payment or release. He is bound, though he accepted without consideration, and for the sole accommodation of the drawer. And if he agrees to accept a bill, although he has no funds in his hands, and the bill is drawn on the faith thereof, and he afterwards refuses to accept it, or to pay it, he will be liable to the drawer for the loss and expense, which his refusal may have occasioned him.

XIII.—ACCEPTANCE FOR HONOR.

A third person, *after protest* for a non-acceptance by the drawee, may intervene, and become a party to the bill, by accepting and paying the bill, for the honor of the drawer, or of a particular indorser. His acceptance is termed an acceptance *supra protest*, and he subjects himself to the same obligations as if the bill had been directed to him.

The mode of acceptance is, for the acceptor personally to appear before the notary with witnesses, and make declaration that he accepts said bill in honor of the drawer or indorser, and that he will ratify the same at the appointed time; and he then subscribes the same thus, "*Accepted supra protest, in honor of A. B.*"

In order to make the liability of the acceptor *supra protest* complete and absolute, the bill must be *duly presented* for payment, at the time it falls due, to the original drawee, notwithstanding; because, between the time of such refusal and the time when the bill would fall due, effects may have reached the drawee, out of which he might, if the bill were presented again, pay the bill; and if the bill is not paid, it must be *duly protested* for non-payment, and due notice given to the acceptor *supra protest*.

The acceptor *supra protest* has his remedy against the person for whose honor he accepted, and against all the parties who stand prior to that person. If he takes up the bill for the honor of the indorser, he

stands in the same position as a *bona fide* indorsee, and has the same remedies to which an indorsee would be entitled against all prior parties.

The holder of a bill is not obliged to take an acceptance *supra protest*.

XIV.—OF THE INDORSEMENT OF A BILL OR NOTE.

The payee, or person legally interested in the instrument, or his agent, must himself make the first indorsement or transfer. A transfer by indorsement vests in the indorsee a right of action against all the parties whose names are on the bill or note, in case of default of acceptance or payment, and against an innocent indorsee for value; no prior party can set up the defence of fraud, duress, or want of consideration.*

The indorsement is an implied contract that the indorser has a good title, and that the antecedent names are genuine; that the bill or note shall be duly honored or paid, and if not, that he will, on due protest and notice, take it up.

If a blank note or check be indorsed, it will bind the indorser to any sum, or time of payment, which the person to whom he indorses the paper may insert in it.

A bill cannot be indorsed for part of its contents after its acceptance; but if paid in part, may be indorsed as to its residue.

An indorser may so qualify his indorsement as to free himself from all liability; as if he should add, "*at his own risk*," or "*without recourse*;" in which case, although the prior and subsequent indorsers would be liable, yet he would be free from all liability, by reason of his special indorsement. Each indorser becomes liable to all subsequent holders.

If a person (not the *payee*) endorses a note when it is made, he will be liable at all events not as endorser,

* The rule that a bill or note payable to order must be transferred by endorsement, applies only to make it negotiable, so that the holder may sue in his own name; for it may be transferred by delivery only, so as to enable the assignee to maintain an action on it in the name of the original payee. But the defendant in such case may set off any demands which existed against the payee, before notice of the assignment, but not subsequent ones. So a note not negotiable, may be assigned, but the assignee takes it subject to all the equities between the original parties, existing at the time of the assignment, and notice to the maker.

but as guarantor. If he endorse it afterward, (not being a regular endorser), he will be liable if his act be founded on any legal consideration, but not otherwise. (4 Pick. 385; 8 Pick. 122.)

XV.—PRESENTMENT FOR PAYMENT.

A bill or note must be presented for payment by the holder or his agent on the day it is due, if he wishes to make the indorsers liable. The presentment must be made to the maker or acceptor, at the place appointed for payment, or at his house or residence, or regular known place of business, or to him personally, if no particular place be appointed.

The insolvency or death of the maker or acceptor, however notorious, will not excuse the neglect to make due presentment. If he be dead, presentment must be made to his personal representative, whether executor or administrator, and if there be neither, then at the house of the deceased.

Where a note is made payable "*at either of the banks,*" in a large city, where there is a large number of banks, the holder may present it at any one of the banks which he may select, and it will be a sufficient presentment.

Where a note is made payable at a particular place, as at a certain bank, it is sufficient for the holder to present it at the specified place, and if dishonored there, the drawer and indorsers will be liable upon due notice.

Where no place of payment is specified on the note, the presentment ought to be made to the maker personally, or at his dwelling-house, or place of business.

A presentment at the maker's place of business is sufficient, if made in business hours, even if it be shut, and no person left there to answer inquiries. So a presentment at the residence of the drawee or maker is sufficient, even if he be out of town at the time. But if the maker removes his residence, or place of business, between the time the note was made and when it becomes due, the demand must be made at such new place of business or residence if within the same State with the old, provided it be known, or can by due diligence be found.

Where the maker abandons his business and residence, and removes into another State, before the maturity of the note, the holder is not bound, in order to charge the indorser, to demand payment of the maker in the State to which he has removed; but he is bound to demand payment at the maker's last residence or place of business, within the State where he made the note, if he can find it by the use of due diligence.

Where a note is *dated*, and delivered in one State, and the maker actually resides in another, it would seem to be sufficient for the holder to demand payment at the place where it is dated.

The presumption of law is, that the maker of a note resides at the place where the note is dated; and inquiry and demand, at that place, is sufficient. *Mass. Decision, 1857.*

If the drawer has never resided at the specified place of address, or has absconded, the holder is excused from making further inquiries, after using due diligence at that place. But if he has merely removed the holder must endeavor to present the note, at the place where he resides.

If the holder of a note makes diligent, though unsuccessful inquiries, to ascertain the maker's residence, at the time the note falls due, it is sufficient, and will be as effectual as an actual presentment.

The absence of the maker of a note on a voyage at sea, if his family still reside in the State, will not excuse a demand of payment, because it may happen that he has left with his family means to pay the note. Payment may therefore be demanded of his wife or agent.

It is sufficient to constitute a demand and refusal to pay a note, that the maker, on the day it becomes due, calls on the holder at his store, where the note is, and informs him that he cannot and shall not pay it, and desires him to give notice to the indorser, though the note is not produced.

But where a note, made payable at a bank, is not at the bank when it falls due, and no demand is then made on the maker, the indorsee cannot charge the indorser, by giving him seasonable notice of non-pay-

ment, although the maker had previously told the indorsee that it would be useless to send the note to the bank, because he could not pay it.

The holder must have the note in his possession, ready to be delivered up, when the presentment for payment is made.*

XVI.—WHAT WILL EXCUSE NON-PRESENTMENT.

We have seen that where the holder uses due diligence to ascertain the residence of drawee or maker, and is unsuccessful, it is as effectual as an actual presentment.

So where a note is made for the accommodation of a particular indorser, the non-presentment of the note to the maker for payment, will not discharge such indorser from liability, as he is in fact the real party owing on the note; but as regards all other indorsers to the note, due presentment must be made.

So an indorser may waive his right to have the note presented at its maturity, and in case of non-payment, to have proper notice of the fact. The usual words, where an indorser waives his right in this respect, are "*waiving demand and notice.*" But an agreement to waive *notice*, will not excuse the party from making a due *presentment* for payment; and care should always be taken in such cases, to use language that clearly imports a waiver of these rights, as courts construe such language strictly. Of course, the fact that one indorser has waived his right to demand and notice, does not affect the rights of the other indorsers.

It is not necessary that the waiver should be in writing, and if it clearly appears from all the circumstances that the indorser intended to waive notice, or demand, or both, he will not be entitled to them. Thus, where the indorsee, who lived in New York, observed to the indorser, when he received the note, that he had no confidence in the other parties to the note, and did not know them, and should look wholly to him, and the indorser replied, that he should be in New York when

* The holder of a note endorsed after it is due, is bound to demand payment of the maker in some reasonable time, or to make some reasonable efforts to do so.

the note became due, and would take it up, if it were not paid by any other party to it; it was held that this was a waiver of a right to notice of the dishonor of the note.

When the maker of a promissory note has assigned all his property to the indorser for his security against the indorsements, the indorser is considered as waiving a demand on the maker, as well as notice to himself by an indorsee.

If due demand on the maker be not made, or due notice of non-acceptance or non-payment be not given, yet a subsequent promise to pay, by the party entitled to notice, be he either drawer or indorser, will amount to a waiver of the demand or notice; provided the promise was made unequivocally, and with full knowledge of the fact of a want of due diligence on the part of the holder.

When a draft has been protested for non-acceptance, the holder is not bound to present it at maturity for payment to preserve his recourse.—*Dec. N. H.*

XVII.—PRESENTMENT FOR PAYMENT OF NOTE ON DEMAND.

In the case of indorsed notes, or bills, payable on demand, a presentment for payment should be made within a reasonable time, in order to subject the indorser. What is deemed a reasonable time, must, to some extent, be determined by the peculiar circumstances of the case.

Where a note was made payable on demand, with interest, and indorsed at the time, it was held to be a reasonable construction of the instrument, that neither the parties to it, nor the indorser, contemplated an immediate demand, but all regarded the real time of payment as future, and the indorsement as a continuing guarantee.

In Massachusetts, it is provided by Statute, that a demand must be made at or within *sixty days, without grace*, from the date of the note, in order to charge an indorser who has notice thereof; a demand made after sixty days discharges the indorser.

To charge an indorser of a note payable on demand, he must have received notice of non-payment upon the *first* demand on the maker. (11 Met. 400.)

XVIII.—PAYMENT OF BILL OR NOTE.

Payment of a bill or note should be made to the holder and the real proprietor of the instrument, or to some person authorized by him to receive the money.

The acceptor of a bill, or maker of a note, should pay it on a demand made, at any time within business hours, on the day it falls due. And, if it be not paid on such demand, the holder may treat it as dishonored; but the acceptor has the whole of that day within which to make payment.

When part of the amount of any bill or note is paid, it should always be marked on the note, or the party paying may be liable to pay the amount a second time to a *bonâ-fide* indorsee.

The holder may bring actions against the acceptor, drawer, and all the indorsers, at the same time; but, though he may obtain judgment in all the actions, yet he can recover but one satisfaction for the value of the note.

Where a creditor directs his debtor to remit, by post, the money due to him, by a bill of exchange, or note, or where it is the usual way of paying such debt, if the bill or note be lost, the one who remits is not liable. But the letter containing such remittance should be put in the post office by one who can prove specially the delivery of it.

XIX.—DAYS OF GRACE IN THE UNITED STATES.

In Maine, New Hampshire, Massachusetts, North Carolina, South Carolina, Alabama, Indiana, Kentucky, Wisconsin, Iowa and Michigan, three days of grace are allowed on all bills of exchange, payable at sight, or at a future day certain, and on all promissory negotiable notes, orders and drafts, payable at a future day certain. But the rule of giving three days' grace on sight drafts is said not to prevail in Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, Mississippi, Missouri, Tennessee, Illinois, Arkansas, California and Florida.

No days of grace are allowed on bills, &c., payable on demand; and if no time of payment is expressed on the note, it is treated as one payable on demand.

Where days of grace are by law allowed on bills or notes, they are not considered due until the expiration of the days of grace.* It would therefore be equally unseasonable to demand payment before the third day of grace, as after the day. The demand must be made on the third day of grace, unless it happens to fall on Sunday, or some public day, when the demand should be made on the second day of grace, otherwise the drawee of the bill, and the indorser of the note, are discharged.

The demand must be made at seasonable hours; as, within business hours, if made at the maker's place of business; or within the usual hours for a family to be up, if made at his dwelling-house; otherwise the demand is not good. So a note payable at a bank, must be paid within bank hours.

XX.—NOTICE TO INDORSERS.

It is not sufficient for the holder of a bill or note, to show that he has made a demand, or used due diligence to obtain the money of the drawee or maker; but he must give seasonable notice to the drawer or indorsers, or their authorized agents, that the note or bill has been dishonored, otherwise they will not be liable.

The holder of a bill or note, therefore, should, immediately upon its dishonor, give due notice thereof to all the parties he intends to look to for payment. Any indorser who has received seasonable notice is liable, although no notice be given to the drawer or prior indorsers, as the holder need give notice to no one, excepting such as he wishes to hold liable. The indorser, therefore, on receiving notice of the dishonor of a bill or note, should give immediate notice to the drawer and indorsers to whom he means to resort. A notice, however, from the holder to any other party, will inure to the benefit of every other party, coming

* In computing the time a bill or note has to run, the day of its date must always be excluded; so must the day upon which it falls due, in computing the days of grace, upon the last of which it must be presented; therefore, if a bill, payable ten days after sight, be presented on the first day of a month, the ten days expire on the eleventh, and the bill, by the addition of the days of grace, when there are three, becomes due on the fourteenth.

between the person giving the notice, and the person to whom it is given.

The notice must be given by the holder or his authorized agent; and notice by a mere stranger will not be sufficient. If the holder is a bankrupt or insolvent, then notice by his assignee will be sufficient.

Where the parties to be notified reside in the same town or city with the holder, they must have personal notice of the dishonor of the bill or note, either verbally or in writing; or a written notice must be left at their dwelling-house or place of business. Either mode is sufficient; but one or the other must be observed, unless it is prevented by the act of the party entitled to the notice.

Where the parties do not live in the same town with the holder, the notice may be sent by mail or by a private hand. It is usual to send by mail, and that perhaps is the better way. Where the holder lives in the same town with a party to be notified, it will not be sufficient to send the notice to the Post Office, unless the holder can prove that the party actually got the notice. It has been thought that in a large city, where there is a penny post established, a notice sent through the Post Office would be sufficient.

If the holder uses the ordinary mode of conveyance, he is not required to see that the notice is brought home to the party; and putting the notice by letter into the Post Office is sufficient, though the letter should happen to miscarry. No proof is required of its having been actually received.

To excuse a want of notice by reason of ignorance of an indorser's residence, such ignorance, and due diligence to discover it, must be shown on the part of the owner of the note as well of the notary and bank.*

The notice must be given or sent within a reasonable time. It is considered a reasonable time to give notice the next day after the note is dishonored. If notice is to be sent by mail, it should be put into the Post Office time enough for the first mail on the day

* When the notice stated that the note had been *this day presented for payment*, and refused, and the notice was without date, *held*, that the notice was defective.

WHEN IS WANT OF NOTICE EXCUSED.

next after that on which it is dishonored. Thus, if the third day of grace be Tuesday, and the note or bill is dishonored, and the drawer or indorser live out of town, the notice may be sent on Tuesday, but it *must* be put into the Post Office on Wednesday. The same rule, as to the time of notice, applies where the indorser and holder live in the same town.

Each party, successively, into whose hands a dishonored note may pass, is allowed, it would seem, one entire day, for the purpose of giving notice. If the demand be made on Saturday, the notice may be given on Monday.

Where there is no post, the ordinary mode of conveyance, such as the *first* ship, or *carrier*, is sufficient. But there is considerable risk in sending notice by a private hand, where there is a regular post; for, if the notice arrive later by the former than the latter, the parties may be discharged. Notice to one of several partners is equivalent to notice to all.

XXI.—WHEN IS WANT OF NOTICE EXCUSED.

If the drawee refuses to accept, because he has no effects of the drawer in hand, and the drawer had no right to draw, and no right to expect his bill would be paid, protest and notice to the *drawer* are not necessary. This exception applies only to the drawer, and not to the indorser of a bill drawn without funds; and it is advisable even, to give due notice to the drawer, to avoid any mistake; for if the drawer should suffer any detriment by reason of not having notice, he would probably be discharged.

If the holder or his agent goes to the place of business or dwelling-house of the person entitled to notice, within seasonable hours, and finds the place shut, and no person there to receive notice, he is not obliged to go a second time, or even to leave a notice. If, however, the party entitled to notice, has changed his residence, notice should be sent to his new residence.

The holder is also excused for not giving regular notice to an indorser, of whose place of residence he is ignorant, provided he uses reasonable diligence to

32 FORM OF NOTICE.—PROTEST, WHEN NECESSARY.

discover where the indorser may be found. And where he has used reasonable diligence to discover the residence of the indorser, notice given as soon as it is discovered is due notice.

Notice may be waived by an express agreement between the parties, in the same manner as a demand for payment, which see.

XXII.—FORM OF NOTICE.*

There is no precise form of words necessary to be used in giving notice of the dishonor of a bill or note, but the language used must be such as to convey notice to the party what the bill or note is, that payment has been refused by the maker or acceptor, and that the holder looks to him for the amount. The notice may be given verbally or in writing, and must give information of the fact, that the note is dishonored by the fault of the maker.

Thus, a notice given to the indorser of a note, merely stating that the person giving notice holds the note, and that it is due and unpaid, and demanding payment, is not sufficient to charge the indorser; for it does not inform him that *demand* has been made of the promisor, and payment refused, or in any other way, by express declaration or reasonable implication, give him information that the note was in fact dishonored.

XXIII.—PROTEST, WHEN NECESSARY.

Foreign bills as distinguished from inland bills, are such as are drawn or payable, or, both, abroad, or in a foreign state.

* *New York, Jan. 1, 1858.*

Please to take notice that a promissory note for — dollars, made by A. B. and indorsed by you, dated —, having been duly presented and payment thereof demanded, which was refused, is therefore protested for non-payment, and that the holders look to you for payment thereof.

C. D., *Notary Public.*

Boston, Jan. 1, 1858.

SIR:—A promissory note, for \$ —, dated —, signed —, payable to the order of —, at — indorsed by —, having been protested by me this day for non-payment, I hereby notify you that the holder looks to you for payment, interest, cost and damages, payment having been duly demanded and refused.

Done at the request of the Cashier of the — Bank.

E. F., *Notary Public*

A bill drawn in one state and payable in another, is a foreign bill, so as to make the protest admissible in evidence, although all the parties were residents in the state where the bill was drawn.—*Decision in Mass.*

If the bill be dishonored, the holder should have it immediately protested, and the protest should be made by a notary-public, but if none can be procured, it is said that it may be made by an inhabitant, in presence of two witnesses. (Bayley, 259.)

With respect to an *Inland Bill, or Note*, for which the law does not require a protest, it is sufficient, in all cases, to give notice of non-payment, to entitle the holder to claim interest of the drawer.

By the general law-merchant, no protest is required to be made upon the dishonor of any promissory note; but it is exclusively confined to foreign bills of exchange. Neither is it a necessary part of the official duty of a notary to give notice to an indorser of the dishonor of a promissory note. But a state law or general usage may overrule the general law merchant in these respects.—*Decision in U. S. C.*

Where a protest is necessary, it is not indispensable that it should be made by a person who is a notary. (*ib.*)

The protest ought to be specific, as to the mode in which the notices were given, by stating whether they were verbal or in writing; and if in writing, whether the writing was delivered to the person notified, or despatched by some other mode of conveyance, and, if the latter, by what mode, and when sent, and to what place addressed. But if the protest be defective, the necessary facts may be supplied by other proof.—*Decision in Maine.*

The relation which exists between a notary and the holder of a note, with regard to the protest of the note, and notice to indorsers, is that of principal and agent, and no more strict performance of duty is required of the notary than is indicated by the uniform practice of the place where the note is protested.—*Decision in New York.*

A drawer or indorser of a foreign bill of exchange is liable to the expenses of the protest, and to a rate of damage established by law or usage.

Whether an accommodation note can be protested for non-payment, so as to authorize a charge against the maker and his sureties for notarial fees? At any rate a protest is unnecessary.—*Decision in Alabama.*

A protest of a promissory note is not absolutely necessary, (1 *Yeates*, 147,) nor of an inland bill of exchange, (6 *Wheat*, 146 ; 8, 326.)

XXIV.—LOSS OF BILL OR NOTE.

In case of the loss of a bill or note, transferable by mere delivery, any person who has, previous to its becoming due, given a *bonâ fide* consideration for it may enforce payment against the acceptor or other parties, notwithstanding he derived his interest in the instrument from the person who found or stole it. And, if a lost or stolen bill or note, transferable by mere delivery, and for which no consideration has been given, be presented to the drawee at the time of its becoming due, and he pay it before he has notice of the loss or robbery, he will not be liable to pay it over again. But when a bill or note transferable only by indorsement, and not indorsed, is lost by the person entitled to indorse, no person getting possession of it by a forged indorsement will acquire any interest in it, although he gave a sufficient consideration for it, and was not aware of the forgery. And in such a case, if payment has been obtained by a *bonâ fide* holder from the drawee, such payment will not be protected.

In case of the loss of a bill, to entitle the holder to recover, he should immediately give notice thereof to the acceptor, and all the antecedent parties; and when the bill is transferable by mere delivery, should also give public notice of the loss: but this will not be available unless notice of the loss be brought home to the knowledge of the party taking the bill.

If a note or bill of exchange be lost, and the party prove the fact on his oath, he may still recover upon it; but if negotiable he may be required to tender a bond of indemnity both to the maker and indorser

against all claims, that may afterwards arise, from such lost instrument.

In all cases where the law provides no relief for the loss of a bill or note, a court of equity will, on sufficient indemnity being given, enforce the payment of it.

An action may be brought on a lost negotiable note, which had not been negotiated at the time of its loss.

XXV.—ALTERATION OF A BILL OR NOTE. FORGERY.

It is a general rule of law that, if a bill or note, after it has been once issued, or after the time it was originally payable, be materially altered in any respect, as in the date or sum, or time of payment, (1 *Taunt. Rep.* 430,) all parties, who were not consenting to such alteration, will be absolutely released from their responsibility, although the alteration should have been made by a person not a party to the bill or note. But a bill is capable of alteration before it has passed into a state of negotiation, particularly if the alteration be made for the correction of a mistake, or in furtherance of the original intention of the parties, and that it be made with the acquiescence of the parties. 2 *Stark.* 45.

It is not, however, prudent to make any alteration, even of the most trivial character, in a bill or note.

Forgery.—The forgery of bills or notes, or of any part of them, and the passing of them knowing them to be forged, are respectively felonies.

To misapply a genuine signature, to sign the name of a fictitious non-existing person, or to sign a man's own name with an intention that the signature should pass for the signature of another person of the same name, are as much forgeries as to fraudulently write the name of an existing person. Every fraudulent alteration amounts to forgery.

If money be paid under a mistake as to facts, it may be had back. If, therefore, a forged note be discounted, the person discounting, on discovery of the forgery, may recover the money. But he cannot recover if there have been any fault or negligence on his part. So, if the drawer of a bill, by any act of his, facilitated or gave occasion to the forgery, he must bear the loss himself, but not if otherwise.

XXVI.—LIABILITIES OF BANKS AS AGENTS.

A bank receiving for collection a bill of exchange drawn here upon a person in another State, is liable for any neglect of duty in its collection, arising from its own officers, correspondents or agents.—*New York Decisions*, 2 *Wend.* 215.

A bank that receives from another bank, for collection, a note endorsed by the cashier of that bank, is bound to present it to the maker for payment, at maturity, and if not paid, to give notice to the bank from which the note is received, is not bound, unless by special agreement, to give notice to the other parties to the note.—*Mass. Decisions*.

 LIABILITIES OF HOLDERS OF CHECKS.

Checks, or *Drafts*, are orders addressed to the cashier of a bank, or a banker, directing him to pay the sum specified in the check to the person named in it, or bearer [or order] on demand.

In point of form, a check nearly resembles a bill of exchange, except that it is *generally payable to bearer*, and should be drawn upon a bank, or regular banker; though this latter point is not essential. When payable to bearer, it is assignable by delivery only; and is payable instantly on presentment, without any days of grace being allowed. But when payable to *order*, it must be indorsed before it can be collected.

No.	TRADERS BANK.	<i>B—</i> , Jan. 6, 1858.
\$150.		
Pay to JOHN WILLIAMS, or bearer, one hundred and fifty dollars.		
To the Cashier.		WILLIAM BROKER.

It is difficult to define what is the due or reasonable time within which checks should be presented. A man is not obliged to neglect all other business, that he may immediately present one: nevertheless it is the safest plan to present it without any avoidable delay; and if received in the place where payable, it had better be presented that day, or next at furthest.

Payment for a check before due is contrary to the usual course of business; and, therefore, when a banker paid a check a day before it bore date, which had been lost, he was liable to repay the amount to the loser.

A creditor is not bound to take a check on a bank, transmitted to him as payment of his debt, and he may commence an action for the debt while the check is yet in his hands.

A check on a bank payable at a future day, is not a bill of exchange, and requires no notice of dishonor.

DAMAGES ON PROTESTED BILLS OF EXCHANGE.

(As regulated by the Statutes of the different States.)

Maine.—Payable out of the state, and in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, or New York, 3 per cent; in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, South Carolina or Georgia, 6 per cent; and at the rate of 9 per cent if payable in any other state; and within the state, at not less than 75 miles distant, in sums of \$100 and over, 1 per cent. Payable out of the United States, 10 per cent.

New Hampshire and Vermont.—In these states there are no statute provisions on the subject. The usual practice has been to charge the rate of damages existing at the point where the bill was payable.

Massachusetts.—Payable out of the United States, except beyond the Cape of Good Hope, 5 per cent; in Africa or Asia, beyond the Cape, 20 per cent; in Maine, New Hampshire, Vermont, Rhode Island, Connecticut and New York, 2 per cent; in New Jersey, Pennsylvania, Delaware and Maryland, 3 per cent; in Virginia, District of Columbia, Georgia, and North and South Carolina, 4 per cent; elsewhere in the United States or Territories, 5 per cent., with interest and costs. Within the state, not less than 75 miles distant, in sums not less than \$100, one per cent.

Rhode Island.—Payable without the United States, 10 per cent; in other states 5 per cent.

Connecticut.—Payable in the City of New York, 2 per cent; in New Hampshire, Maine, Vermont, Massachusetts, Rhode Island, New York (out of the city,) New Jersey, Pennsylvania, Delaware, Maryland, Vir-

gnia, or District of Columbia, 3 per cent.; in North Carolina, South Carolina, Georgia or Ohio, 5 per cent; in any other State or Territory, 8 per cent.

New York.—Payable in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia or District of Columbia, 3 per cent; in North Carolina, South Carolina, Georgia, Kentucky or Tennessee, 5 per cent; at any other place in the United States, or on this Continent North of the Equator, or the West Indies, or elsewhere in the West Atlantic Ocean, 10 per cent; in Europe, 10 per cent.

New Jersey.—[There are no statute regulations on this subject in this state.]

Pennsylvania.—Payable out of this state in the United States and Territories, 5 per cent,—excepting the Californias, Oregon, and New Mexico, which is 10 per cent.; West Coast of South America, 15 per cent.; China, India, or other parts of Asia, Africa, or Islands in the Pacific ocean, 20 per cent; Mexico, Spanish Main, West Indies, or other Atlantic Islands, East Coast of South America, Europe, and all other parts of the world 10 per cent.

Delaware.—Payable at any place within the United States, out of Delaware, 5 per cent; at any place in any foreign country, 20 per cent.

Maryland.—Payable without the state, and at any place in the United States or Territories thereof, 8 per cent; in any foreign country, 15 per cent., and interest.

Virginia—Payable out of the state, at any place within the United States, or Territories, 3 per cent; in any foreign country, 10 per cent.

North Carolina.—Payable in any of the United States, 3 per cent; at any other place in North America, on the North West Coast, in the West Indies or Bahama Islands, 10 per cent; in Madeira, the Canaries, the Azores, Cape de Verds, or other place in Europe or South America, 15 per cent; in any other part of the world, 20 per cent.

South Carolina.—Payable within the United States at any place out of South Carolina, 10 per cent; in any other part of North America, or the West India

Islands, $12\frac{1}{2}$ per cent; in any other part of the world, 15 per cent.

Georgia.—Payable within the United States or Territories out of Georgia, 5 per cent; at any place without the United States, 10 per cent., with legal interest.

Alabama.—Act of 1858.—The damages on Inland Bills of Exchange for non-acceptance or non-payment, are 5 per cent., and on foreign bills 5 per cent. on the sum drawn for. Bills drawn and payable in this state are termed inland bills; and those drawn in this state and payable elsewhere are considered foreign.

Florida.—On foreign bills, and bills payable in other states, 5 per cent.

Mississippi.—Payable at any place out of the state, within the United States, 5 per cent; out of the United States, 10 per cent, with charges and interest.

Louisiana.—Payable at any place out of the state, within the United States or Territories, 5 per cent; at any place without the United States, 10 per cent.

Tennessee.—Payable without the state at any place within the United States, 3 per cent; in any other place in North America, bordering on the Gulf of Mexico, or in the West India Islands, 15 per cent; in other parts of the world, 20 per cent.

Kentucky.—On foreign bills, 10 per cent damages are allowed, if demanded within 18 months. On inland bills, damages are governed by the law of the place.

Ohio.—Payable at any place without the United States, 12 per cent; within the United States at any place out of Ohio, 6 per cent.

Indiana.—Payable at any place without the United States, 10 per cent; at any place within the United States out of Indiana, 5 per cent.

Illinois.—Payable at any place without the United States, 10 per cent; at any place within the United States, and out of Illinois, 5 per cent.

Missouri.—Payable at any place within the state, 4 per cent; out of the state, and within the United States, 10 per cent; at any place out of the United States or Territories, 20 per cent.

Michigan.—Payable within the states of Wisconsin, Indiana, Illinois, Pennsylvania, Ohio, or New York, 3

per cent; if within the states of Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia or the District of Columbia, 5 per cent; at any other place within the United States, 10 per cent; if without the U. S. the current rate of exchange at the time of demand, with 5 per cent. damages.

Arkansas.—Payable at any place within the state, 2 per cent; in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri, or at any point on the Ohio river, 4 per cent; in any other place in the United States, 5 per cent., but if protested for non-payment, after acceptance, then 6 per cent.; at any place out of the United States, 10 per cent, together with costs and interest at the rate of 10 per cent, from the date of the protest.

Wisconsin.—Payable at any place without the United States, 5 per cent., with the current rate of exchange at the time of demand; out of the state, but adjoining the same, 5 per cent; in either of the states not adjoining this state, 10 per cent.

Iowa.—Out of the United States and in Oregon, Utah, and New Mexico, 10 per cent; in Iowa, Missouri, Illinois, Wisconsin and Minnesota, 3 per cent; in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, District of Columbia, Virginia, Ohio, Indiana, Kentucky, Tennessee, Mississippi, Louisiana, and Arkansas, 5 per cent; in any other state, 8 per cent.

Texas.—Payable out of the state, 10 per cent.

California.—Payable within the U. S. east of the Rocky mountains, 15 per cent.; in Europe, or any foreign country, 20 per cent.

Canadas.—Payable in Europe or the West Indies, 10 per cent damages, with six per cent interest; in North America, except the West Indies, 4 per cent damages, with six per cent interest.

District of Columbia.—[Rates similar to Maryland.]

USURY.

Laws against usury prevail in all the States subjecting the offender to different penalties.

Nothing is legally usurious but what the statutes prohibit; a usurious contract, therefore, must be so by express words, or merely an evasion to avoid the statutes. Therefore a bargain for an annuity, though under its value, is not usurious; yet, if the price be manifestly greatly under value, equity would hardly permit the taking of excessive interest.

But, as the statutes of usury are founded upon principles of public policy, it is not consistent with that policy, that those who make profit on money, with comparatively little hazard, should have the same profit as those who employ it in hazardous undertakings; and a reasonable commission, beyond legal interest, for extra incidental charges, as upon agency for remittance of bills, is not held to be usurious.

But where there is a borrowing and lending of money, and an agreement for interest, any device to have more than legal interest is usurious.

In a question of usury, the intention of the parties gives character to the transaction, and no matter what the form, when the real truth and substance is a loan of money at usurious interest, no shift or device can take it out of the law against usury.

Every case of usury must depend on its own circumstances; and the intention of the parties, when it can be come at, and not the words used, must govern.

Though the parties to a usurious transaction may reform it by cancelling the original security, and making a new obligation for the amount due after deducting the usury, they cannot, by any transaction between them, render valid such original security.—*Dec. in N. Y.*

Accordingly, where the holder of a usurious mortgage indorsed thereon an amount equal to the sum included in it for usury, it was held that the mortgage was nevertheless void, though the indorsement was made with the assent of the mortgagor.—*ibid.*

A bonus of ninety dollars was paid on a loan of three thousand, and a note given for the amount, with interest payable semi-annually. Jury found that the contract was usurious, and that the forfeiture was eight hundred and ten dollars, being three-fold the amount of the bonus and interest for one year.—*Mass. Dec.*

LAW OF CONTRACTS.

I.—DEFINITION OF A CONTRACT.

Mr. COMYN defines a contract an agreement or mutual bargain between two contracting parties entered into either *verbally*, that is by word of mouth only, or in *writing*. When reduced into writing, it is either subscribed with the hands and seals of both the contracting parties, or merely with one or both their signatures. Such contracts as are reduced into writing, under hand and seal, are technically called *deeds* or *specialties*; and those which are merely by parol, or in writing not under seal, are denominated *simple* contracts. A written agreement, not *under seal*, is considered as much a simple or parol contract as an agreement by mere word of mouth.

The contracts mostly in use in commercial affairs are simple or parol contracts.

The chief legal distinctions between simple contracts and contracts by specialty, or deed, it will be proper to explain.

1. In support of an action on simple contract, the creditor must prove it was founded on a *sufficient consideration*, but in a proceeding on a contract by deed, the want of consideration forms no defence to an action. 2. A deed is not affected by the Statute of Limitations (like an instrument not under seal.) 3. The obligation of a deed can only be avoided by a release *under seal*, and not by parol. 4. And, lastly, as a special contract is considered a more deliberate and solemn engagement than by parol, the party bound thereby is not allowed to plead against any stipulation it contains, that it was executed with a different *intent* to what the terms of the deed itself import.

Who are capable of entering into a Contract.

Any person capable of binding himself by contract, is capable of entering into an agreement.

A person *Non-compos* cannot enter into an agreement. Contracts made during a state of *drunkenness* are voidable, upon the ground, that it is a state of temporary

idiocy or lunacy. By the common law *Minors* cannot contract, except for necessities, such as food, clothing, medicine and education; and in judging of what are necessities, the comparative age and position of the party will be considered. If one lend money to a minor, it would seem that the borrower would not be bound, though he lay it out on necessities, as the necessity is judged of from the nature of the contract, not from what the minor may do in consequence of it. A *Wife*, during intermarriage, is incapable, without her husband's consent, of acting on an agreement; except with respect to such real and personal property as is secured to her by deeds of trust. No sum exceeding one dollar can be recovered of a *Seaman* in the merchant service, for a debt contracted during the time he shall actually belong to any ship or vessel, until the voyage be ended.

II.—OF SIMPLE CONTRACTS.

He who parts with his money, property, or money's worth, whether by way of sale, loan, or hire, to another, or gives his labor, or executes work, or does or performs any services for another on the faith of a promise, either express or implied, of payment or remuneration, ought to take care to be in a position to prove, not only the promise, if express, but the consideration upon which such promise was founded.

Thus he ought to be able to prove the actual loan and delivery of money lent, or payment, if paid to or for another, and at his request, the delivery of goods or property sold or hired, or the work, labor, or services, performed; and that by a witness totally uninterested in the subject matter of loan, payment, sale, hire, or service, and not incapacitated from giving evidence on his behalf.

A wife at all times and under all circumstances is incapable of being a witness on behalf of her husband, except in certain cases where she acts as his agent.

One partner cannot be a witness for his copartner, if the subject matter in litigation be co-partnership property; or if the partner has any interest in it.

And indeed any one who has an interest in the matter litigating, is generally an incompetent person to give evidence respecting it.

In all actions for the amount or price of goods, or other personal property sold, the following may be considered as necessary to be established on the part of him who seeks to establish the debt. The order or agreement to purchase of the party from whom payment is bought, or the order or agreement to purchase on his behalf by some other person legally authorized by him to give such order or make such purchase, and the time or date of such order or agreement; the price or amount agreed on, and promised to be paid; the time agreed on for payment, if at a period subsequent to the delivery of the goods or other property to the purchaser, as his lawfully authorized attorney or agent, or to another person, by the order of such purchaser or agent,—and the value of the goods or other property sold and delivered.

Where the subject of the contract is work or labor performed, or services rendered, the points necessary to be established are, the *hiring* or *engaging*, the *sum*, or *amount of wages* or *salary* at which *hired*, the performance of the work or services contracted for; and that in a proper and workmanlike, or due and faithful manner, and within the time specified, if time has been made a part of the contract; and the value of the work, labor, or services done or performed, in case of failing to establish a sum agreed on for it.

III.—OF WRITTEN CONTRACTS.

One of the chief regulations for the government of trading transactions is that contained in the *Statute of Frauds*, so called, which, originally enacted in England, has been substantially copied into almost all the States of the Union. It provides, that “*No contract for the sale of goods, wares, and merchandize, for the price of ten pounds* sterling, or upwards, shall be allowed to be good, except the buyer shall accept of part of the goods so sold, and actually receive the same, or give something*

* In Maine and Missouri it is \$30.00; New Hampshire 33; Connecticut 35; Vermont 40; Massachusetts, Wisconsin, Michigan, Indiana & N. York 50.

in earnest to bind the bargain, or in part payment ; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged, or their agents thereunto lawfully authorized."

The Statute also provides that no action shall be brought in the following cases :—

First, to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or,

Secondly, to charge any person, upon any special promise to answer for the debt, default, or misdoings of another : or

Thirdly, to charge any person, upon any agreement made upon consideration of marriage : or

Fourthly, upon any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them : or

Fifthly, upon any agreement that is not to be performed within *one year* from the making thereof; unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in *writing*, and signed by the party to be charged therewith, or by some person by him lawfully authorized.

In Maine, Massachusetts, and Vermont, no person is liable by reason of any *representation, recommendation, or assurance*, made concerning the *character, conduct, credit, ability, trade or dealings* of any other person, unless such representation or assurance be made in *writing*, and signed by the party to be charged thereby.

Note.—In Massachusetts, Maine, Vermont, Michigan, Ohio and N. York, a new promise, by a debtor, to pay a debt, which has been running more than six years, and which cannot therefore be collected without a renewal of the promise, must be in *writing*, signed by the debtor, otherwise it will be of no force. [See *Art. Limitations of Actions*, page 65.]

It is not necessary, however, that the memorandum should be *signed* by both parties. It is sufficient if the name of the party charged appear thereupon; and he will be bound, not only when it is *signed* by him, but whenever *his name is written or printed* within the body thereof, *by his own order, or with his consent*.

The advantages of reducing all contracts and agreements into writing must be evident to every thinking mind, and that from a principle which all acknowledge, and to a certain extent, act up to — that of reducing everything, as far as practicable, to certainty. If a contract is reduced to writing, a denial of it becomes impossible, from even the most unprincipled; and forgetfulness of it, by one side, immaterial; since the proof of its having been entered into is in the possession or power of the other side; and any disagreement as to its nature, terms or conditions, will be less liable to arise than if left to unassisted memory.

And it should be matter of peculiar attention, in a written contract, that all particulars and material circumstances connected with it are embodied in it. With a view to certainty it should ever be borne in mind that, where parties themselves make and fix their own terms, it is to be and is presumed that they, knowing their own intentions and engagements, will provide for, express, and settle them; and therefore where a contract, the terms of which have been expressly fixed by the parties, is brought before a court of law, if it should turn out that one of the parties to it had omitted to cause a clause to be inserted, providing for a contingency which has subsequently happened, he will be without a remedy; the court not rectifying the errors or supplying the omission of the parties, but giving effect to the contract as it actually and really subsists.

If the terms of a written contract are ambiguous, they may be explained verbally; but no evidence to contradict what is written, by showing that the parties at the time intended something different, can be offered, unless there has been fraud.

It is not necessary that the terms and conditions of a contract, when in writing, should all be specified in the same document; they may be contained in several papers, such as letters, from which the whole terms may be collected; it must, however, be clear that there is a distinct agreement between the parties — that there has been a proposal on one side, and an acceptance of such proposal on the other.

1st.—Contracts must be founded on some consideration.

All contracts are void unless founded on some consideration. A valid and sufficient *consideration* or *recompense* for making, or motive or inducement to make the promise upon which a party is charged, is of the very essence of a contract not under seal, and must exist, although the contract be reduced into writing; otherwise the promise is void, and no action can be maintained thereon.

All promises, therefore, which are wholly gratuitous, are void for want of consideration. To make a promise binding, the party making the promise must have obtained some advantage, or the party to whom it is made must have suffered some loss or sustained some injury and inconvenience, in consequence of the one party making and the other accepting the promise.

It is not, however, necessary, in order to constitute a sufficient consideration, that a benefit should accrue to the person making the promise; it is sufficient that something valuable flows from the person to whom it is made, and that the promise is the inducement to the transaction. Thus, where a benefit is done to a third person, at the request of the promiser, it is sufficient to support the promise.

Inadequacy of consideration will not render a promise of no force; for if a contract is deliberately made, without fraud, and with a full knowledge of all the circumstances, the least consideration will be sufficient.

2d.—Promise to pay the Debt of another, when Binding.

It has been seen, that a promise to pay the debt of a third person must be *in writing*, or it is of no force.

It is not necessary, however, that the promise should be in writing, if the party sought to be charged has acted and been treated as the *principal debtor*, and not merely as surety for the debt of a *third* person.

Thus, the sale may be to one man, although the goods are to be delivered to another, and a person may promise as the real debtor, and not in the character of a surety, to pay for goods supplied to or for work done at his request, or by his directions for a third party; and if he has been treated by the person who furnished

the goods or did the work, as the party liable, and credit has been given to him, his promise or undertaking to pay is not a collateral promise to answer for the debt of another.

In order to determine whether the party giving the undertaking or making the promise of payment is primarily or collaterally liable, the attending circumstances and the situation of the parties must be regarded, as well as the exact expressions used. If the seller has made the party to whom the goods have been furnished his debtor, *if he describes him as such in his books*, or in letters, he can only treat the other as a surety, and his promise to be binding must be in writing. "I always," said an eminent judge, "require the tradesman to produce his books to see to whom credit has been given." (2 C. & M. 430.)

A promise to pay the debt of a third person must not only be in writing, but it must be for a *valuable consideration*. The following examples will explain what is requisite to make such a promise valid:—

As my brother owes you \$28 for boots and shoes, I will pay you that sum for him on the 1st of next month.

To Mr. Jones.

THOS. NOAKES.
1st Jan., 1858.

This written undertaking is not binding, because it is for the debt of another person, which is already incurred, and there is no new consideration to support it. Had it been thus worded:—

In consideration of your undertaking not to arrest my brother, (who is about to leave the state,) for the debt of \$28 which he owes you for boots and shoes, I hereby undertake to pay the amount on the 1st of next month.

To Mr. Jones.

THOS. NOAKES.
1st Jan., 1858.

it would have been valid; because the consideration for it was the forbearing to arrest the brother. So a promise thus worded:—

To Messrs. A. & B.—Gentlemen,—I hereby undertake to pay for any goods which you may deliver to Mr. S."

would be valid; as it is evident that A. & B. delivered the goods to S. on the above undertaking; and it is the undertaking which is the consideration for the delivery of the goods.

Anything, however trifling, done by one party for the benefit of the other, will be a legal consideration.

IV.—OF VERBAL CONTRACTS.

These are either express or implied.

By express contracts are meant those wherein nothing is left to be implied or supposed, but the terms of which are fixed and expressed by the parties to such contracts, being created by the words of such parties.

As if A undertakes to perform a certain act, as to build a house for a given sum, this is an express contract.

By implied contracts are meant such wherein the terms thereof really exist, though no expression of assent thereto, or adoption thereof, has been given by the contracting parties; it being supposed by the law, to have been their meaning and intention to make those terms; and, therefore, the law implies such. For example —

If A employs B to build a house, for which B is to be paid a fair and reasonable sum, it is not sufficient that B performs his part of the contract by running up, in an improper and unworkmanlike manner the four walls, and other necessary parts of the building; in the absence of all agreement on the subject, there is an implied contract on his part to build such house in a proper and workmanlike manner. This is an implied contract. Again, on the indorsement of a bill of exchange, it is implied that, if the drawer or acceptor do not pay the amount of it to him to whom it is indorsed, the indorser will pay it on having due notice of its non-payment.

Proof of a verbal agreement will be admitted both in law and equity to control a written agreement, when the detection of fraud renders such proof necessary, but not otherwise.

A sealed contract may be waived by a new verbal agreement. Where a plaintiff, by an instrument under seal, agreed to erect a building at a fixed price, which was not an adequate compensation, and after part fulfilment, refused to proceed, and the defendant, as an inducement, told him that he should be paid for

his labor and materials, and should not suffer,—and he went on and finished the building, it was held that he was entitled to recover in assumpsit upon the parole promise. (9 Pick. 298.)

V.—OF EXPRESS CONTRACTS.

Where there is an express contract no different contract can be implied; the courts of law dealing with an express contract in the same manner as if it had been reduced to writing, with this difference, that every verbal contract is open to objection, and to be opposed by parole evidence, that is, evidence by word of mouth. A verbal contract stated by one party to have been made in certain precise terms may be denied by the other side to have been so made, and though truth may ultimately prevail, (we say "*may*," for it is not possible always to arrive at the truth; and if the truth cannot be arrived at, and some decision must be come to, that decision will be made according to what is proved, and that will be taken to be the truth, though possibly it may not be,) yet there is a possibility of difficulty and doubt in all verbal contracts; and, therefore, they cannot, even though express, be reduced to the same certainty as written contracts.

It may be laid down, that every contract or engagement entered into between two or more parties, in which they themselves provide for and fix, though verbally, the terms and conditions of the contract or engagement, without leaving any part of it to implication, or to be supplied by presumption of law, may be called express.

And some contracts, though express, may involve, in addition to the express contract, an implied one; but such implied contract cannot be different, or contrary to, or inconsistent with, the express contract. For example:—

In the instance before stated of a builder engaging to build a house for a given sum; this is an express contract, and this farther implied contract is involved therein, though not expressed (if the consideration be fair and reasonable), that he shall do the work in a proper and workmanlike manner.

VI. — OF IMPLIED CONTRACTS.

Implied contracts are those which arise, not from the special agreement of the parties, but from the circumstances of the case.*

If I employ a person to transact any business for me, or perform any work, the law implies that I undertook to pay him so much as his labor deserved.

If one take up goods or wares of a tradesman, without expressly agreeing for the price, there is an implied understanding that the value of them shall be paid.

Another implied undertaking is when one has received money belonging to another, without a consideration given on the receiver's part; for the law construes the money received for the use of the owner only, and implies that the person so receiving it, undertook to account for it to the owner. And if he unjustly detain it, damages may be recovered. So, money paid by mistake, or on a consideration which happens to fail, or through imposition, extortion, or oppression, or where any undue advantage is taken, may be recovered back.

When a person has laid out and expended his own money for the use of another, at his request, the law implies a promise of repayment.

Upon a stated account between two merchants or other persons, the law implies that he against whom the balance appears, has engaged to pay it to the other, though there be not any actual promise. Actions, however, to compel a person to bring in and settle his account are now seldom used; the most effectual way to settle these matters, is to file a bill in equity, when a discovery may be had on the *defendant's oath*, without relying merely on the evidence which the plaintiff may be able to produce.

Every one who undertakes any office, employment, trust, or duty, such as a public officer, banker, an attorney, carrier, wharfinger, factor, or the like, contracts with those who employ or entrust him, to perform it with integrity, diligence and skill. And if, by the want

* This law also applies to the rights and liabilities of *Common Carriers*; a subject fully treated in the "Shipper's and Carrier's Assistant, and Marine and Inland Insurer's Guide," one of this series. Price 25 cents.

of either of these qualities, any injury accrues to individuals, they have their remedy and damages by a special action on the case.

With an innkeeper, there is an implied contract to secure his guest's goods in his inn; with a common carrier, to be answerable for the goods he carries; with a common farrier, that he shoes a horse well without laming him; with a tailor, shoemaker, or other workman, that he performs his business in a workmanlike manner; with a consignee that he will be vigilant and careful in receiving and forwarding goods entrusted to his care; and, upon refusal to receive goods consigned to him, he would be liable to the owner for any loss occasioned thereby. (6 W. & S. 66.)

If any one cheat me by false weights and measures, or by selling one commodity for another, an action lies for damages upon the contract; since the law implies that every transaction ought to be fair and honest.

In contracts in sales, it is constantly understood that the seller undertakes that the commodity is his own. In contracts for provisions, it is implied that they are *wholesome*; otherwise, in either case, action lies for damages.

When silence may be construed into an agreement.

Silence may sometimes be construed into assent, as when a person is fully aware of what is doing affecting his interest, and he makes no objection. Thus, if a man is present when a bargain is made, in which he is concerned, and he says nothing, though it appears that he is neither awed into silence, nor in any way hindered from speaking, and that he is aware of the nature of his interest. (*Powel on Con.*, 132.)

So where a man sends his servant to buy upon trust, he is liable upon the servant's bargains. So where it cannot be proved that the servant was sent, but that his master knew he was in the habit of taking up goods upon his (the master's) account, he will be liable. (*ib.*)

Where a man does not know, and cannot know the nature of the engagement that he enters into, it is a general rule that his assent shall be valid when it is altogether in his favor. (*ib.* 138.)

Ignorance or error will in general invalidate an as-

sent, as where the matter of the bargain is falsely explained. This is always the case when there is deception upon the face of the bargain. (*ib.* 150.)

VII.—SALE AND CONVEYANCE OF ESTATES.

As a general principle, the law affords no redress for *oversights* committed in the purchase of estates, which might have been avoided by ordinary judgment and vigilance. But if the vendor, knowingly, conceal *latent* defects, either as regards the estate or its title, he cannot compel the execution of the contract, though the estate be sold expressly subject to all its faults.

A conveyance obtained for an inadequate consideration, from one not conscious of his right, by a person who had notice of such right, will be set aside, though no actual fraud is proved. But if there be no fraud in the transaction, mere inadequacy of price would not be deemed sufficient, even in equity, to vacate a contract.

If it be falsely asserted that a valuation has been made of an estate at a higher price than really was the case, the purchaser is not bound to complete the purchase. So if the particulars of the sale of a house describe it to be in good repair when it is not so, the purchaser need not fulfil the purchase, unless there be time to complete the repairs before his right of possession commences. A false affirmation of the amount of rent would relieve the purchaser.

In cases of sales and purchases of estates, the contract for the sale or purchase must be in writing, and must be signed by the parties interested, or their agents, and must contain all the terms of the agreement, such as the names of the parties concerned, the property to be sold, and the consideration to be given.

VIII.—PURCHASE, SALE, AND DELIVERY OF GOODS.

If one person agrees with another for goods at a certain price, he may not carry them away before he has paid for them; for it is no sale without payment, unless the contrary be expressly agreed. And, therefore, if the seller says, the price of the goods is ten dollars, and the buyer says he will give ten dollars, the bargain

is struck, and neither of them is at liberty to be off, provided immediate possession, or payment, be tendered by the other side. But if neither the whole nor any part of the money be paid, nor the goods nor any part of them delivered, nor an offer made, nor the agreement put in writing, it is no sale, and the owner may dispose of the goods as he pleases.

No sale is complete, so as to vest in the buyer an immediate right of property, so long as anything remains to be done between the seller and the buyer in relation to the goods, such as counting, weighing, or measuring. But when either are done, so that the articles are separate and distinct, the *bargain is struck*, and the property of the goods is vested in the vendee, and remains at his risk.

So, if a horse die in the *interval* of sale and delivery, the conditions of the statute having been complied with, the vendor is entitled to his money, though no actual change of property has taken place.

It is important to know, at what time, and by what means, the property in the thing sold is transferred from the seller to the purchaser, and becomes vested in the latter. The question becomes of consequence, in deciding, at whose risk the goods were at the time of their loss,—when the lien of the vendor for the purchase money ceases—and what is a sufficient delivery to take the case out of the statute of frauds, (i. e. of preventing the necessity of having the sale in writing.)

The most simple mode of transfer is by the actual delivery of the goods sold by the vendor to the vendee; but it is often a matter of some difficulty to ascertain what particular facts amount to a delivery.

If part of the goods have been prepared, and are then lost, the buyer must bear the loss. Thus, where a certain number of casks partly filled with turpentine were sold, and by the terms of sale, the casks were to be filled up, and in pursuance thereof part of them were filled, when the whole were lost, it was held that as to the casks that were full the purchaser must bear the loss, and as to the others, no property had passed and they were at the risk of the seller.

If the goods are sold upon credit, and nothing is

agreed upon, as to the time of delivering the goods, the vendee is immediately entitled to the possession; this right of the purchaser may however be defeated by his becoming insolvent.

The question of the delivery of the goods to the purchaser or when they are deemed to be in his possession becomes very important in cases of insolvency; for though goods are sold upon credit, and have actually been sent to the purchaser, yet if the latter becomes insolvent, the seller may stop the goods, and hold them as security for the purchase money, at any time before they are delivered to the buyer, or come into his possession. This is called *stoppage in transitu*.

The *delivery* of a cent or glove is sufficient *earnest* within the statute.

A sample, if it diminishes the bulk of the commodity to be finally delivered, is a sufficient delivery; but if it be considered only as a specimen, forming no portion of the commodity, the delivery and acceptance will not be sufficient; the delivery of a *bill of parcels*; or of the receipt, ticket, sale-note, certificate, or stamp, will be sufficient constructive delivery. And also as respects *bulky* articles, the delivery of the key of the warehouse in which goods are deposited; the marking the purchaser's name on the goods; the payment of warehouse rent; the assignment of a ship or bill of lading of goods at sea; the sale of lumber lying on a wharf; or of logs lying within a boom, &c.

Delivery of goods to an agent of the purchaser, such as a carrier, if with the knowledge and assent of the purchaser, is sufficient.

Where an article is not in existence, but is to be manufactured or made, no property passes to the purchaser until it is finished and ready to be delivered to him, though made by his special order, or even if the price should have been already advanced. Until the thing is accepted by the purchaser, he acquires no property in or right to claim it; and the maker may, if he choose, dispose of it to another person. But if made under the superintendence of a person appointed

by the purchaser, or if he find the materials, he would have a claim for the amount paid for the materials furnished, or the cost incurred for superintendence.

The note or memorandum of a bargain must state the *price* for which the goods were sold. An order for goods on "moderate terms" is a sufficient memorandum. (5 B. & C. 583.)

The meaning of a variety of documents may be taken conjointly to prove a sale.

In the absence of any agreement, it is the duty of the buyer to take the goods, and when the seller has done all that he is to do, the goods will remain in his possession at the risk of the buyer.

But although in such case, it is the duty of the buyer to call and take the goods, and they remain at his risk, yet unless the sale was made upon credit, he will not be entitled to possession of the property, without first paying or tendering the price.

It is the duty of the seller to perform his share of the contract, by delivering the property. If he refuse, the purchaser may bring *assumpsit* for non-delivery. In doing so he must prove that he has performed all the conditions incumbent on him; especially that he has paid, or tendered payment of the price, unless the sale be on credit. In this latter case the vendor has no lien, and cannot refuse delivery, except the goods be left in his possession until the period of credit expires. It is the duty of the purchaser first to take delivery of the goods, and then to pay for them. The vendor, if he have performed his share in the contract, may sue him, for goods bargained and sold, if the property be delivered, in which form he will recover his entire price, or specially upon the contract, in which case he will recover the amount of damages he has actually sustained.

With respect to *exchanges*, there is no difference between sales and exchanges, but a delivery on one or both sides is essential to establish the contract.

IX. — WARRANTY OF GOODS.

In all cases of *express* warranty, if the warranty prove false, or the goods are in any respect different from what the vendor represents them to be, the buyer is entitled to compensation, or he may return them,

and claim the purchase-money. But a *general* warranty does not intend to guard against defects which are obvious to ordinary circumspection, or where the false representation of the vendor is known to the vendee; as if a horse with a *visible* defect be warranted perfect, or the like, the vendee has no remedy.

Where goods are sold by sample, there is an implied warranty that the whole are equal to the sample, otherwise the purchaser is not bound to take them upon any terms, although there may have been no fraud on the part of the seller. If, however, the article should turn out not to be merchantable, from some *latent defect in the sample*, as well as in the bulk of the commodity, the seller is not answerable. The only warranty is, that the whole quantity answers the sample.

An express warranty extends to all faults known and unknown to the seller. Unless the defect was apparent, and such as the purchaser might have discovered at the time of the falsehood. Where there is *no express* warranty, it seems the vendor merely undertakes to make a good title to the vendee, to show, that the goods delivered are such as were contracted for, and that no deceit was practised to disguise their defects; and in case of provisions, that they are wholesome.

Warranty must be at the time of the sale; if it be made after, it is void for want of consideration.

X. — SALE OF HORSES.

The property in horses is not easily altered by sale, without the express consent of the *owner*; for a purchaser gains no property in a horse that has been *stolen*.

A warranty of *soundness* in a horse may be defined, in its enlarged sense, a guarantee from constitutional defects; but, in its practical sense, is construed so as to exclude every defect by which the animal is rendered less fit for present use and enjoyment. 1 *Stark*, 127.

A defect arising from a temporary injury capable of being speedily cured, and not interfering with such enjoyment, the horse is not, on that account, to be held *unsound*; still less if the purchaser be informed of it, and admits the exception into the terms of the contract, 2 *Esp*. 673.

XI. — HIRING AND BORROWING.

These are contracts by which a qualified property is transferred to the *hirer* or *borrower*; the difference is, that *hiring* is always for a price or recompense; *borrowing* is merely gratuitous. In both cases the law is the same. They are both contracts whereby a transient property is transferred, for a particular time, or use, on condition to restore the goods so hired or borrowed, as soon as the time is expired, or use performed, together with the price or recompense, (in case of hiring,) either expressly stipulated or left to be implied by law, according to the value of the service. Thus, if a man hire or borrow a horse for a month, he has a qualified property therein during that period; on the expiration of which, his qualified property determines, and the owner becomes, in case of hiring, entitled to the price for which the horse was hired.

In all cases of hiring and borrowing, there is an implied condition that the thing hired or borrowed shall not be abused or improperly treated, so that it cannot be returned in as good condition as it was received.

XII. — BILL OF SALE.

This is a contract, under hand and seal, whereby a man transfers the interest he has in goods to another; such an instrument is binding against the party who executes it, whether it were for valuable consideration or not; but it may be fraudulent and void against creditors, and in some cases an act of bankruptcy.

So a bill of sale of goods made for a valuable consideration, with the knowledge and consent of the creditors, is valid against them, though unaccompanied with possession.

A bill of sale is sometimes given with a condition for resuming the goods at a certain period on payment of the money advanced; but it is a dangerous method of obtaining accommodation, and should be cautiously adopted.

In some states the seller retaining possession of the goods after sale, is conclusive evidence of fraud, in others, only *prima facie*.

XIII. — AVOIDANCE OF CONTRACT. — FRAUD.

After bargain for the sale of goods, if the vendee does not come and pay for them, and take them away in a reasonable time after request, the vendor may elect to consider the contract rescinded, and re-sell the goods.

Generally, if either vendor or vendee neglect to fulfil the conditions of the sale, the other is at liberty to avoid the bargain.

A contract for the sale of goods may also be avoided by the *Statute of Limitations*, which fixes the period beyond which a plaintiff cannot lay his cause of action. [See title "*Limitation of Actions*," also "*Remedies for the Recovery of Debts*."]

Although a good and sufficient consideration is necessary to the validity of a simple contract, yet a contract may be avoided when founded on a legal consideration, if the execution of the engagement involve the violation of any public law or statute.

All secular contracts consummated on Sunday are void ; as well as all contracts which are repugnant to law, sound policy, or public morals.

In contracts obtained by deception or misrepresentation, there must be some actual damage done to the plaintiff, to obtain ground for civil action.

When persons are employed to bid for the owner at auction, not in order to prevent a sacrifice, but to advance the price of the goods, by pretended competition, the purchaser may treat the sale as void, if, in fact, he be thereby misled.

Contracts in restraint of trade and business are void, as they militate against public policy. But it is different if one contract, for a valuable consideration, not to carry on a particular trade, or not to exercise it in a particular place.

If a seller and purchaser combine for the purpose of secreting property from the creditors, with a mutual fraudulent intent, the sale is void.

When a sale is made without consideration, it is void as to creditors.

Partners are liable for the fraud of one of the firm, or of their agent, in the sale of partnership property.

But the firm is not bound if one partner give partnership security for a private debt of his own, and the creditor have knowledge that it is out of the scope of partnership dealing.

Verbal evidence of fraud is admissible against a written agreement.

When the assignment is fraudulent, or not assented to by creditors, a creditor may proceed to secure his debt by attachment, or by a trustee, (or garnishee,) process.

Contracts may be rescinded or waived, by all the parties to it dissenting from the bargain *before* the period of performance.

Where a purchaser buys on the faith of a false representation by the seller, touching the essence of the contract, the sale will be set aside in equity, whether the misrepresentation were the result of fraud or mistake. (*Story's R.* 700.)

If a seller mislead the purchaser by a false or mistaken statement as to any essential circumstance, the sale is voidable. (*ib.*)

So, where a person obtains goods upon a *false representation, as to the value of his property*, and gives his note in payment, the seller need not wait until the note falls due, but may, immediately *upon discovering the fraud, waive the contract*, and bring an action to recover the value of the goods. But in order to do this, the goods must have been obtained upon the *false representation of the purchaser, alone, and not of others, as to the value of his property*.

XIV. — PRECAUTIONS TO BE OBSERVED IN ENTERING INTO CONTRACTS.

All stipulations and provisions which it is intended should be considered as forming a part of the contract or agreement, together with every particular as to persons, amounts, time, place, and other circumstances should be inserted; and that, in terms which will admit of but one construction, so as to avoid difficulty or doubt, in case of disagreement; the courts deciding upon a contract under seal as it is; and not as it was intended, or may be asserted it was intended, to be, if

contrary to its express stipulations; and no evidence being admissible though even in writing, if not under seal, to vary its terms.

PAYMENT, WHEN CAN BE DEMANDED.

IN some branches of trade, custom has established a general usage as to the period of credit upon sales of goods, and, where no specific stipulation is made to the contrary, this customary credit is as much a part of the contract as if expressly agreed upon; the law implying that all persons deal according to the general usage, unless the contrary appear.

Where no such usage prevails, and no time of payment is specified in the contract of sale, the money is demandable immediately upon the delivery of the goods.

If the vendor stipulate to deliver certain goods within a limited time, he cannot demand payment till the *whole* of the goods are delivered.

A person contracting to deliver a certain quantity of goods, and failing to deliver the *whole* quantity agreed upon, may recover for the part delivered and accepted by the buyer. The buyer can only be exonerated from payment by refusing to *accept a part*; for, if he accept and take the benefit of part, no protest, at the time of acceptance, will relieve him from liability of payment.

Payment to the proper agent of the seller will release the buyer. If the seller have given directions for transmitting the money in a particular manner, the buyer, by complying with the directions, and using due caution, relieves himself of responsibility, any loss which may occur falling on the seller.— 4 *Bing.* 112.

INTEREST, WHEN IT CAN BE CLAIMED.

WITH respect to *interest*, it is determined that interest is not allowable on a demand for goods sold and delivered, unless where there is a specific agreement for that purpose; as by a bill of exchange, promissory note, or an express promise to pay interest; then the vendor is entitled to interest from the time specified.

Interest is allowable, where there has been either an express or an implied contract therefor; and a contract

to pay interest will be implied either from a general mercantile usage, or custom ; as in the case of bills of exchange and promissory notes, upon which, in the absence of any other agreement, interest runs from the day when the principal ought to be paid.

If a note be payable on demand, and there is no express agreement in relation to interest, it does not commence running till after a demand is made. Where no other demand is made, the commencement of a suit for the money will be regarded as a demand for the purpose of computing interest. (9 Pick. 369.)

Interest is never allowed upon an open and running account, unless by express agreement ; but as soon as the account is stated, and rendered to the debtor, and no objection is made to it by debtor, interest begins to run. An account current, received and not objected to within a reasonable time, becomes a settled account, bearing interest from the time it is stated. But where goods are sold, to be paid for by bill or note, which is not given, interest is due from the time when the bill, or note, if given, would have been payable, and is recoverable in an action for goods sold, &c. ; or where upon a sale, and an agreement for payment by bill, the purchaser refuses to give it, interest is recoverable in a special count, for not giving the bill from the time from which the bill, if given, would have borne interest.

A demand of payment of an unsettled claim for goods sold and delivered, or services rendered, entitles the party to interest from the time of the demand, and a presentment of the account or commencement of a suit is sufficient demand upon which to found, and from which to date, a claim of interest. (22 Pick. 291.)

An agreement for interest will be implied from the particular course of dealings between the parties, or the special custom of one party known and acceded to by the other ; as where it is the custom of a particular person to charge interest upon all sales made by him, after the expiration of a certain time, in which case, he may charge all his customers with interest, who have knowledge that such is his custom. So if, according to an established usage, or an understanding between the parties arising out of their mode of deal-

ing or otherwise, a certain term of credit is to be given, no interest can be claimed until after the expiration of that term. (8 Wend, 109.)

So, a contract to pay interest is implied, where the money of one person has been used, or detained wrongfully, by another; or been kept by another, when it should have been paid over. (9 Pick. 369.)

Where an agent, having received money, unreasonably neglects to inform his employers of it, he is liable for interest from the time when he ought to have given information. So, interest is to be allowed where the law by implication makes it the duty of the party to pay over the money to the owner without any previous demand on his part. (*ib.*)

Interest, from the time of payment, is to be allowed on money paid at the request and to the use of another.

NOTE.—*Manner of computing interest on notes where partial payments have been made.*—In casting interest upon bonds, notes, &c. upon which partial payments have been made, every payment is to be first applied to keep down the interest; but the interest is never allowed to form a part of the principal, so as to carry interest, for the effect in such case would be to give compound interest, which the law does not allow. (17 Mass. 417.) To avoid this, the following rule has been adopted by the United States Courts, and most of the State Courts:—

Compute the interest on the principal sum, from the time when the interest commenced to the first time when a payment was made, *which exceeds*, either alone or in conjunction with the preceding payments, if any, the interest at that time due; add the interest to the principal, and from the sum subtract the payment made at that time, together with the preceding payments, if any, and the remainder forms a new principal; on which compute and subtract the interest, as upon the first principal, and proceed in this manner to the time of the judgment. (1 Pick. 194; 2 Wash. C. C. R. 167; 17 Mass. 417.)

Where a money rent is reserved in a lease of land, payable on a certain day, and is not paid, it carries interest as matter of right. (4 Wend. 313, 317.)

Although it is a legal usage of merchants to cast interest on the items of their mutual accounts, and strike a balance at the end of a year, and make that balance the first item of principal for the ensuing year, yet neither the usage nor the law allows this to be done, except under a specific agreement, after the mutual dealings of the parties have ceased. (11 Metcalf, 210.)

The law does not allow interest upon interest accrued, even where a note is made payable with interest annually. (7 Greenl. 49; 8 Mass. 455; 2 Cush. 92.) Otherwise in some other states.

LIMITATION OF ACTIONS.

1. *Time within which debts can be collected.*—Actions of contract founded upon any contract or liability not under seal; (except such as are brought upon a

judgment or decree of some court of record of the U. States, or of some one of the States); actions for arrears of rent, except upon leases under seal; actions of assumpsit or upon the case founded upon any contract or liability, express or implied; actions for waste and trespass upon land; actions of replevin; and all other actions for taking, detaining, or injuring goods or chattels, and all other actions on the case, except for slander and libel, must be commenced within a stated number of years after the cause of action accrues. In most of the States, this time is limited to six years.*

2. *When actions can be brought on sealed contracts, &c. &c.*—All contracts under seal; promissory notes signed in the presence of an attesting witness (provided the action be brought by the original payee, his executor or administrator); or any bill or note issued by a bank; or a judgment of a court of record, are embraced by the general limitation, which varies in different states, from eight to twenty years.

3. *Exception of open and mutual accounts.*—Where there have been open and reciprocal accounts between merchant and merchant, the cause of action is generally deemed to have accrued at the time of the last item charged in the account.

4. *Case of defendant out of the State.*—Where a person is absent from, or residing out of the state, at or after the time when any cause of action accrues, (and has not attachable property in it,) such absence is not counted as part of the time of limitation; nor is the time counted, during the continuance of a war between this country and that of an alien plaintiff.

5. *Acknowledgment, or new promise.*—Although the *Statute of Limitations* bars the remedy after six years, the debt itself is not extinguished thereby; and the debtor may, by a *new promise* to pay such debt, revive the original liability, which will commence from such promise or admission. To have this effect however

* For further on the subject of Limitations, See Remedies for Collecting Debts in the different States, pp. 70 to 101.

there must be an *express promise* to pay, or a *distinct and unqualified* admission of the debt.

In Maine, Vermont, Massachusetts, New York, Illinois, Michigan, Iowa, Ohio, Virginia, Missouri, Arkansas, Indiana, Texas, and California, the Statutes provide, in general, that no acknowledgment or promise shall be evidence of a new or continuing contract, whereby to take a case out of the Statute of Limitations, unless such acknowledgment or promise is made or contained by or in some writing, signed by the party to be charged thereby.

A common mode of implied acknowledgment is an indorsement of interest or partial payment of the principal, by the maker, or in his presence, upon the instrument.

An oral admission by a defendant that he has made a payment on the demand in suit, within six years next before the suit was commenced, is competent evidence to take the case out of the Statute of Limitations. 9 Met. 482.

6 *Notes and bills of exchange*.—The statute begins to run from the time they are due, and when entitled to grace from the last day of grace.

~~~~~ TRUSTEE PROCESS,—GARNISHEE PROCESS.

THE object of the trustee process is to enable a creditor to attach the property of his debtor in the hands of a third person. It is very serviceable in avoiding fraudulent transfers of property made by the debtor for the purpose of concealing the same, and thus preventing it from being attached for his debts. This process, therefore, is very often resorted to, to test the fairness of assignments for the benefit of creditors.

There are three parties in a trustee process:—the plaintiff; the debtor, called the principal defendant; and the trustee, who is summoned to appear in the suit, upon the ground that he has in his hands, goods effects, or credits, belonging to the defendant.

The service of a copy of the process on the trustee, fixes the property or debt in his hands, as a stakeholder

for the party ultimately entitled ; and if after that the trustee pays over to the debtor, he does so at his peril.

Who liable to be summoned as trustee, and what property is not attachable by this process.—As a general rule, every person having goods, effects, or credits of the defendant in his possession, may be summoned as trustee, and the property in his hands will be held to respond to the final judgment.

There are, however, some exceptions to this, namely :

First, Generally no person will be adjudged a trustee by reason of having drawn, accepted, made, or endorsed any negotiable instrument.*

Secondly, Nor by reason of any money or other thing received by him as sheriff, or other officer, by execution or other process in favor of the principal defendant.

Thirdly, Nor by reason of any money in his hands for which he is accountable as a public officer.

Fourthly, Nor by reason of any debt due from him on a judgment, so long as he is liable to an execution on that judgment.

Fifthly, Nor by reason of any money or other thing due from him to the principal defendant, unless due absolutely, and without depending upon any contingency.

Proceedings in the case.—If the trustee does not appear he is defaulted, and will be charged with having in his hands property of the defendant equal to the whole debt proved against the defendant. If the trustee appears, he must answer under oath, if required, as to the property, if any, of the defendant's, in his hands ; and he will be charged or not upon his answers under oath, as the court shall decide.

If any person claims that the property in the trustee's hands is his property, and not that of the defendant, he may appear in court as claimant, and contest with the plaintiff his title to the property. In such case the defendant will be allowed to testify as to whom the property belongs.

Where the trustee is charged in a suit, the execution runs against the goods, effects, and credits of the defendant in the hands of the trustee. If he does not expose the property to the officer, or satisfy the execution, then a new writ, called a "*scire facias*," issues against him alone, requiring him to show cause why he should not pay the same, and if judgment is obtained, the execution will run against the person and property of the trustee.

* New Hampshire is an exception to this rule. (See page 71.)

PART II.

REMEDIES FOR THE RECOVERY OF DEBTS.

Of the Remedies of the Creditor, and Means of Enforcing Payment from his Debtor, in all the States of the Union.

COMMENCEMENT OF A SUIT AT LAW.

WHERE there is a debt owing, it is held that a creditor is not obliged to allege or prove any demand of payment before he brings his action; for bringing an action is technically said to be a sufficient request; *for it is the debtor's duty to find out the creditor, and pay him his debt.*

Whenever the plaintiff's right of action depends on a condition to perform some act or thing, he must prove that condition to be performed, unless it be prevented, or rendered idle, or unnecessary by the act of the defendant.

The attachment of property upon a writ is one of the most common and effectual means of securing a debt. The property attached is deemed to be in the custody of the law, and is to be retained by the officer for the purpose of satisfying the claim of the creditor, in case he shall obtain judgment in the suit, take out execution, and levy it upon the property in a limited time.

It is usual to annex a schedule of particulars to the writ, and refer to it in the declaration. But this is not necessary, though the want of such an exhibit might, probably, from a supposed want of notice, operate as a ground of continuance for defendant, on motion.

In all the New England States, and this is the case in most of the others, all civil actions must be commenced in the county where one of the parties resides.

Wherever the matter of the action is local, the plaintiff must sue in the county in which the cause of the action arises; but, where transitory, he may sue anywhere, unless some statute otherwise direct.

Where the Statutes of any State require that a contract or demand shall be supported by *affidavit*, and the plaintiff is not an inhabitant of the state, it may be taken and subscribed before a Commissioner of the State where plaintiff resides; it should specify the nature of the debt, the amount over and above all discounts and off-sets, and that the balance claimed is justly due, and the account correctly stated. In some states an indorser to the writ, in others a bond with sureties, is required of the plaintiff, who thereby becomes liable for costs, in case judgment is rendered in favor of defendant. [See *Mode of Collecting Debts in different States*, and also *Forms of Affidavits*, at pages 103-5.]

If a person has obtained a judgment against another, for a certain sum, and neglects to take out execution thereon, he may afterwards bring an action of debt upon the judgment.

If the action is on a judgment of a court in another State, a copy should be produced, duly authenticated.

The action of *assumpsit* is the usual remedy on bills or notes. Prom-

ises, either express or implied, by the law raise an *assumpsit*, for the infringement of which the more usual remedy is *action upon the case* on such *assumpsit*.

By the writ of *capias ad satisfaciendum*, (sometimes abbreviated *ca. sa.*), the body of the debtor may be arrested, and, in some cases, imprisoned, until satisfaction is made for the debt, costs, and damages, or the debtor is bailed, or takes the liberty of the yard, or the poor debtor's oath, or petitions for the benefit of the act of insolvency, or gives bond for the payment of the debt, or is discharged by statute. In most of the states imprisonment for debt is abolished except in cases of fraud.

Females are generally exempted from arrest for debts on contracts.

By the writ of *fi. fa.*, (sometimes abbreviated, *fi. fa.*), the officer is commanded to attach the goods of the debtor, whether in his own possession, or in the hands of executors, administrators, trustees, (or garnishees,) always excepting those goods and lands exempted from execution by statute.

UNLAWFUL ATTACHMENT AND ARREST.

The sheriff cannot disunite anything annexed to the freehold, for the purpose of attaching it.

Nor can he attach goods pledged for debt; nor goods demised; or let for years.

Nor can he attach deeds; private papers; account books; promissory notes; liens; goods which cannot be returned in the same plight in which they were taken, such as green hides in a vat, fruit, &c.; the interest of a gratuitous bailee; goods in transit, as the property of the consignee; a boat, cable or anchors in use and necessary for the safety of the vessel.

In some States perishable property *can be attached*, and may be sold pending the proceedings of the court.

Nor can he intermingle goods attached with those of the debtor, so that they cannot be distinguished.

Nor can he attach the household furniture, farmers' or mechanics' tools, or articles for the use of the family, which by law are exempted from attachment.

All the states exempt from execution a certain amount of the household furniture of the debtor for the use of his family, the tools of a mechanic necessary for carrying on his business; a certain number of sheep, swine, a horse, ox, cow, hay, &c., varying in value from twenty dollars to several hundreds. Besides which, many of the states have enacted laws exempting Homesteads.

The absolute property of the goods attached must be in the debtor, in his own right; and therefore, if the sheriff take any other person's goods, though the debtor assure him they are his, he is a *trespasser*; for he must, at his peril, ascertain whose goods they are.

Attached goods may be delivered to the debtor upon his depositing the appraised value in money, or giving a bond therefor.

The sheriff cannot take goods vested in trustees by a settlement before marriage for the benefit of the wife, as against the husband; nor where they are settled after marriage, in pursuance of entails before it; nor where she holds in her own right, by devise, &c.

In case of execution against one of two partners, the sheriff can only sell the individual moiety belonging to the defendant.

In the execution of a civil process, an officer is not at liberty to break open the outer doors or windows of a *dwelling house*; but he may enter peaceably, and may break open an inner door of the defendant, in order to take the goods or person. But it is said he cannot open a latch of the outer door; yet if the goods are in the house of a

stranger, conveyed thither to prevent execution, if, upon request made, he do not deliver them, the officer is justified in breaking and entering. So, where a stranger, whose ordinary residence is elsewhere, upon a pursuit, takes refuge in the house of another, the house is not *his castle*. and the officer may break open the doors or windows, in order to execute his process; so, if one, upon an escape after arrest, flee into his house it shall not protect him. But these restrictions apply only to *dwelling-houses*, and an officer may lawfully break open the door of any other building to make an attachment or arrest.

An arrest, upon civil process, on Sunday, is illegal. A debtor, however, who has escaped from arrest or prison, may be retaken on Sunday.

In delivering possession of lands recovered in a real action, the officer may break out doors, and use force to expel the occupier, if necessary.

Where attachments are made, and the property is to be sold on execution, the laws generally require that the real estate shall be reserved until the personalty has been exhausted.

LIABILITIES OF ATTORNEYS TO THEIR CLIENTS.

If an attorney, in the conduct of a suit, commit an act of negligence, whereby all the previous steps become useless in the result, he cannot recover for any part of the business done. And whether or not, in such case, the work become wholly useless by the plaintiff's fault, is a question for the jury. (2 C. M. and R. 547.)

An attorney is bound to execute the business entrusted to him with a reasonable degree of care, skill, and despatch. If the client be injured by the gross fault, negligence, or ignorance of the attorney, the attorney is liable.

If an attorney, after a demand made, or directions given to remit neglect to pay over money collected by him, in addition to the common liability to his client, the court will, on affidavit of complainant, grant a rule to show cause why an attachment should not issue against him.

LIABILITIES OF SHERIFFS.

An officer who unreasonably neglects to pay any money, collected by him on execution, when demanded by the creditor, forfeits, in Massachusetts, five times the lawful interest of the money, from the time of the demand until it is paid. In other States, he is subjected to similar, and even higher forfeitures.

REMEDIES OF THE CREDITOR.

If the debtor refuses to pay his debts, the creditor's remedy is a resort to law. The process by which debts are collected, varies in different States, the principal difference consisting in the steps taken to reach the property of the debtor. In some States property may be attached at the commencement of the suit, (upon *mesne process*,* as it is called;) in others, it can only be taken after judgment has been obtained upon an execution; in some, the debtor cannot be arrested upon *mesne process*, where property can be attached, unless he is about to absent himself from the State; in others, property cannot be attached, where the debtor can be found and arrested, &c. So the circumstances which will authorize a resort to the *trustee process* differ in different States.

It is our purpose to state briefly the *Remedies for the Recovery of Debts* in each of the States.

* *Mesne process* is used in contradistinction to *final process*, and signifies all such process as intervenes between the beginning and end of a suit.

MAINE.

Actions of debt founded upon any contract or liability, not under seal, must be brought within six years. Actions brought upon witnessed promissory notes, or upon any bill, note or other evidence of debt issued by any bank, and contracts under seal, must be brought within twenty years.

Attachment.—All civil actions may be commenced by attaching the goods and estate of the debtor (except those exempted from execution, and choses in action). When personal property is attached, the officer takes and retains possession of it, or permits debtor to resume it, by giving receipts.

Trustee Process.—All actions on contracts may be commenced by the trustee process, and any person may be summoned as trustee who has goods, effects, or credits of the debtor in his hands. [See *Article Trustee Process*, p. 65.]

Where plaintiff is not an inhabitant of the State, the writ, before entry, must be indorsed by some sufficient inhabitant of the State. Action must be commenced against indorser within one year after judgment.

Arrest of Debtor.—The debtor cannot be arrested for debt, unless the creditor make oath that he believes the debtor is about to depart or reside out of the State, and to take with him more property, or means, than is required for his immediate support, and that the sum demanded, amounts to ten dollars. In an action not founded on contract, or on a judgment rendered upon contract, the defendant may be imprisoned or held to bail.

Exemption from execution.—Wearing apparel, beds, bedsteads and bedding, necessary for the family; household furniture, of the value of \$50. The tools of a mechanic, necessary for his trade and occupation. Bibles, school books and copy of statutes; all cast-iron and sheet-iron stoves used in family; one cow and one heifer; two swine; ten sheep and the wool; thirty hundred hay for cow, and two tons for sheep, and sufficient for heifer; all produce of farm while standing and growing; thirty bushels of corn for family; one pew; potatoes for family; twelve cords of fire-wood; one boat, not exceeding two tons, employed in fishing; one plough; one cart; one harrow; one cooking stove; five tons anthracite, and fifty bushels bituminous coal; and all charcoal on hand; one pair bulls, steers, or oxen, raised by the owner, with hay to keep the same through the winter; one ox-yoke, with bows, rings and staples, two chains, one ox-shed; one or two horses, (instead of oxen); one barrel of flour; ten dollars worth of lumber, wood or bark; burial place not exceeding half an acre, not appropriated for agriculture, a description of which must be recorded in the Registry of Deeds.

Homestead Exemption.—A lot of land, dwelling house and

out-buildings thereon, or so much thereof as shall not exceed five hundred dollars in value, the property of a householder in actual possession ; a certificate of which signed by himself declaring his wish and describing his homestead shall be filed with the Register of Deeds for the County wherein his homestead lies. The widow and minor children of any person deceased, may hold such exempted property during the minority of the children, or while the widow remains unmarried.

Redemption.—The debtor is allowed one year from levy of execution in which to redeem his estate by tendering the sum at which it was appraised, interest, and expenses for improvements, and repairs. Mortgaged personal property may be redeemed in sixty days. Estate sold for taxes can be redeemed within five years from publication of notice. Franchise can be redeemed in three months.

Mortgaged real estate can be redeemed at any time within three years after foreclosure of the same.

An *assignment of property* must provide for an equal distribution of all the debtor's estate among such creditors as become parties thereto.

NEW HAMPSHIRE.

Personal Actions must be brought within six years, except for words and personal injuries then within two years. Contracts under seal within twenty years.

Attachment.—Suit is commenced by attaching personal and real estate of debtor. The attachment first served is to be first paid.

Trustee Process.—Any property of debtor, money or credits, in the hands of a third person, may be attached. Wages however for the last fourteen days' labor are exempted.

If any person summoned as a trustee, is indebted to the defendant by a negotiable note, made or payable in this state, or the parties to which, at the time of making, resided in this state, the court may make a rule requiring such debtor to appear and answer on oath all interrogatories respecting the possession, transfer, or other disposition of such note.

Arrest of Debtor.—The debtor cannot be arrested in any action upon contract, unless the creditor make affidavit before a justice of the peace that in his belief the debtor owes him the sum of thirteen dollars and thirty-three cents ; and that he conceals his property so that no attachment or levy can be made ; or that he intends leaving the State to avoid payment of his debts.

If any person be committed to prison he shall, unless he be bailed before judgment, be held in prison for thirty days after the rendition of judgment, unless sooner legally discharged. The defendant when arrested, may demand to be taken before

two justices, one of the quorum; and if they believe he does not conceal his property, or intend leaving the state, they may order his discharge.

Exemption from Execution.—Wearing apparel, beds, bedsteads, and bedding for family; household furniture, to the value of \$20; bibles and school books; one cow, and one and a half tons of hay; one hog and one pig, and the pork when killed; tools of mechanic of the value of \$20; six sheep and the wool; one cooking stove; provisions and fuel valued at \$20; one pew; uniform, arms and equipments; and lot in cemetery.

Homestead, not exceeding \$500 in value. The sheriff holding an execution to be levied on lands and tenements is required, on application of the debtor or his wife, to cause a homestead not exceeding five hundred dollars in value, to be set off from the lands and tenements of the debtor.

Redemption.—The debtor can redeem real estate, sold on execution, within one year. Mortgaged real estate, and land sold for taxes, can also be redeemed within one year.

VERMONT.

Personal Actions must be brought within six years; on witnessed promissory notes within fourteen years; on judgments and specialties within eight years.

Attachment.—Suit is commenced by writ of summons, or attachment. Writs of attachment may issue against the goods, chattels, or estate of the defendant.

Writs must be served in the order in which they are received.

The Homestead consists of a dwelling house, land, and its appurtenances, valued at five hundred dollars, with its yearly products. Whenever a housekeeper shall decease, leaving a widow and children, the homestead, or the value thereof, shall pass to his widow and children, without being subject to the payment of the debts of the deceased, unless made specially chargeable thereon, or for taxes. The homestead cannot be alienated by the owner, if a married man, except by the joint deed of husband and wife. Provided, however, that the husband may, without consent of his wife, mortgage such homestead, at the time of the purchase thereof, for the payment of the purchase money. Homestead is also liable for debts contracted before the purchase.

There is also exempted from execution, apparel, bedding, tools, furniture, bibles, books, for use of family; cow, hog; ten sheep, and wool; forage for ten sheep and cow; arms; ten cords fire-wood; ten bushels grain; twenty bushels potatoes; growing crops; three swarms of bees, their honey, hives, and 200 pounds of sugar,

Trustee Process.—Attachments may be commenced by the trustee process, when the demand exceeds the sum of forty

dollars, if the defendant resides out of the State, or has absconded, or secreted himself; and holds goods, effects, or credits. A trustee's disclosure, on oath, is not conclusive, and either party may allege and prove any facts material to the inquiry. If the debt recovered by the plaintiff, or the amount in the trustee's hands, does not exceed ten dollars, the trustee is discharged, and recovers his costs.

Arrest of Debtor.—No resident citizen can be arrested in any action for debt unless the plaintiff file an affidavit, that he has good reason to believe that the defendant is about to abscond from the State, and has secreted money or other property, to the amount of \$20, or sufficient to satisfy the demand.

Redemption.—The debtor can redeem his lands six months after levy, by paying costs, &c., and twelve per cent. interest.

MASSACHUSETTS.

Actions must be brought within six years upon contracts; arrears of rent (except leases under seal); replevin; detaining or injuring goods or chattels; waste and trespass on land; and all actions upon the case except for slanderous words and libels; and in twenty years upon contracts under seal; judgments of any court of record; witnessed promissory notes; bills, or other evidence of debt issued by any bank.

Attachment.—All real estates, goods, and chattels, liable to be taken on execution, (except, such goods and chattels as from their nature or situation have been considered exempt according to the principles of common law as adopted in this state) may be attached upon the original writ. Attachments are dissolved by giving bond with sureties for payment of judgment. Transitory actions, if any one of the parties lives in the state, must be brought in the county where some one of them lives or has his place of business.

Articles exempted by Law.—The wearing apparel of debtor and family; bedstead, beds and bedding for every two persons; stove; household furniture of the value of \$100; fuel of the value of \$20; bibles, school books, and library of the value of \$50; one cow, six sheep, one swine, and two tons of hay; provisions for use of family of the value of \$50; uniform, arms and accoutrements; one pew, occupied by debtor; tools, implements and fixtures of the value of \$100; materials and stock, for carrying on his trade or business not exceeding \$100; fishing tackle and nets, in use, not exceeding \$100; tombs and rights of burial.

Homestead.—There is also exempted from execution, the homestead farm, or lot and buildings thereon, to the value of eight hundred dollars, the same being occupied as a residence, and owned or leased by the debtor, he being a householder and having a family. Deed of purchase must set

forth that it is designed to be held as a homestead, or if already purchased, it must be so declared in writing, duly sealed, acknowledged, and recorded. Such homestead enures to the widow and children, some one of them continuing to occupy the same, until the youngest be twenty-one, and until the marriage or death of the widow. Such homestead is liable for a debt contracted for the purchase, and also for a debt contracted before the deed was recorded. Such exemption shall not defeat any mortgage, or other incumbrance or lien existing by virtue of any deed or otherwise. In any conveyance heretofore made, or hereafter to be made, of homestead, the wife may release her right to the homestead in the same manner as a wife may now release her right of dower.

Trustee Process.—Trustee must appear and file his answer within the first four days of the return term of the writ in any county except Suffolk, and in Suffolk within the first ten days of the return term, or during the return term if the court shall not sit ten days in Suffolk, or four days in any other county, or he shall be defaulted, and adjudged a trustee. In trusteeing the wages or services of any person, if the plaintiff shall not recover five dollars as debt, he shall recover no costs. If the wages or services of any person shall be trusteeed for any debt other than for necessities, there shall be reserved in the hands of the trustee a sum not exceeding \$20. which shall be exempt from such attachment. [See pages 65, 66.]

Imprisonment for Debt has been abolished, except in cases of fraud. No debtor can be arrested on *mesne process*, in any action of contract, unless the creditor, or some one in his behalf, make oath, that he has good cause of action, and a reasonable expectation of recovering a sum amounting to twenty dollars; that he believes, and has reason to believe, the defendant has property not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim; that he believes, and has reason to believe, that the defendant intends to leave the State, so that execution cannot be served on him; and such affidavit, and the certificate of the magistrate that he is satisfied that the same is true, shall be annexed to the writ. If the defendant deny under oath, his intention of leaving the State, and the magistrate shall be satisfied that he does not intend to leave the State, he shall be discharged from arrest; he may also be discharged on taking the poor debtor's oath.

Redemption.—Debtor may redeem lands taken on execution, within one year.*

Insolvent Laws.—Any debtor owing two hundred dollars may take the benefit of the Insolvent Law. There are cer-

* Redemption of mortgaged Real and Personal Property, See "Business Man's Assistant," pp. 50, 56, 57.

tain cases in which creditor having a demand of one hundred dollars against the debtor, can compel him to take the benefit of the law. The messenger must give public and personal notice to the creditors of the time and place of meeting. If any debtor being insolvent, or in contemplation of insolvency, shall within *six* months before the filing of petition, make any payment directly or indirectly, or give a preference to any creditor, endorser, guarantor, or surety, *or* shall mortgage, assign, or convey any money or property, *or* shall make any sale, assignment or conveyance either absolute or conditional, the same shall be void, and the assignees may recover from the person so preferred both principal and interest, *provided*, that when accepting such preference or conveyance, he had cause to believe such debtor insolvent.

If, after the filing of a petition, an insolvent debtor secretes or conceals any property, books, deeds, or writings relating to his estate, or shall make any gift, sale, &c., he shall be punished by imprisonment in the state prison for a term not exceeding five years, or in jail not exceeding two years.

No insolvent can receive his discharge if he has altered, or destroyed his books or papers; or being a merchant and tradesman, shall not have kept proper books of account.

Debt of laborer or operative is preferred for fifty dollars.

[See more on Insolvency, and Form of Oath, at pp. 105 & 106.]

RHODE ISLAND — REVISED STATUTES, 1857.

Actions of debt founded upon any personal contract, rent, replevin and trespass, must be brought within six years; and all actions of covenant within twenty years.

Attachments and Arrests.—All property, real and personal, may be attached, except the following:

Wearing apparel of debtor and family; tools not exceeding 50 dollars; household furniture, stores, beds, and bedding, not exceeding 200 dollars; bibles and school books; 1 cow, and 1½ tons of hay; 1 hog, 1 pig, and the pork; uniform, arms, ammunition, and equipments; pew; lot, right of burial; and debts secured by bills of exchange or notes.

Whenever a writ of arrest shall be delivered to an officer, he shall endeavor to arrest the defendant. If he cannot find the body of defendant within his precinct, or, in case the writ lawfully orders an attachment of the "goods and chattels" of the defendant in the *first instance*, he shall attach his "goods and chattels," to the value commanded in the writ.

The officer to whom a writ may be delivered with the words "real estate" added after the words "goods and chattels" shall, in case the body or personal estate of the debtor cannot be found in this state, or, in case the goods and chattels or real estate of defendant are lawfully ordered

to be attached in the *first instance*, attach the real estate in the same manner as personal estate. The attachment first secured is to be first paid.

Trustee (Garnishee) Process.—When any debtor resides or is absent out of the state, or conceals himself therein, so that his body cannot be arrested, or has taken the poor debtor's oath, or obtained his discharge as an insolvent, then the personal estate of such person, or foreign corporation, lying in the hands of their attorney, factor, trustee or debtor, shall be liable to be attached.

No person committed to jail on execution shall have the liberty of the prison yard for more than thirty days, unless he shall execute an assignment of all his estate, not exempted by law, wherever the same may be, to the keeper of said jail, his successor, and his heirs and assigns, in trust for the equal benefit of all his creditors in proportion to their demands.

The limits of the county shall be the limits of the jail yard.

Debtors may be discharged from prison by taking the poor debtor's oath.

Redemption.—Personal estate sold on execution can be redeemed within ten days ; and real estate within three months. Mortgaged real estate can be redeemed within three years.

Insolvent Law.—A person who has been an inhabitant of the State for three years, and whose debts exceed one hundred dollars, can petition for the benefit of this act, which he can obtain by executing a deed of all his estate in trust for the benefit of his creditors.

CONNECTICUT.

Limitation of Actions.—Actions on bonds or other specialties, and promissory notes not negotiable, must be brought within seventeen years. Actions of account, of debt on books, or simple contract, or of assumpsit founded upon implied contract, or notes, must be brought within six years.

Attachment.—The first process for the recovery of debts, is by a writ of attachment, or summons.

If the plaintiff is not an inhabitant of the State, or is unable to pay the costs, if a recovery is had against him, a bond is required in some responsible inhabitant, to meet all damages.

Trustee Process.—The effects of absent or absconding debtor, or goods concealed in the hands of agents, so that they cannot be come at to be attached, or debts due from any person to such debtors, are attachable by trustee process ; excepting a debt, under ten dollars, for personal services.

Homestead., of the value of three hundred dollars, is exempted from execution, with the necessary repairs and additions, though above that sum. Also—apparel ; bed and bedding ; household furniture ; implements of debtor's trade ;

cow ; ten sheep ; two swine and the pork produced from two swine ; or two swine and two hundred pounds pork ; twenty-five bushels charcoal ; two tons coal ; two hundred pounds flour ; two cords wood ; two tons hay ; two hundred pounds beef ; two hundred pounds fish ; five bushels potatoes or turnips ; ten bushels Indian corn or rye and the meal therefrom ; twenty pounds wool or flax or the yarn or cloth made therefrom ; stove and pipe ; pew in church ; horse, saddle and bridle of a practising physician, not exceeding \$ 100 ; burial lot.

Arrest of Debtor.—No person can be arrested except on the ground of fraud. Whenever a debtor is arrested, he may require the officer to take him before a justice of the peace for the county, who may judge between the parties, and, if he see cause, administer the insolvent oath, and thereupon liberate the debtor from arrest.

Redemption.—Lands sold on execution cannot be redeemed.

Insolvent Law of 1853 requires that assignments shall be for the benefit of all the creditors, or creditor may petition Judge of Probate for appointment of trustee of debtor's estate. All attachments made within sixty days preceding such assignment, or application, are dissolved. All conveyances by mortgage or otherwise, which shall have been made in view of insolvency are void. Debtor must make oath of the delivery of all property of every kind, in or out of the State, and that he has not conveyed or disposed of any property for the purpose of giving any preference in view of Insolvency. Debtor to receive a sum not exceeding \$ 15 a week for support of himself and family, and for a time not exceeding six months. If the estate pay fifty per cent., debtor is to receive twenty-five per cent., amount not to exceed \$ 1000. If the estate pay seventy-five per cent., or more, debtor shall be entitled to an absolute discharge. The household furniture to be included in debtor's inventory of the estate, but the court shall set off to debtor so much as is necessary for debtor and his family, not exceeding \$ 300. Claims must be presented within six months. All debts for labor performed within six months preceding institution of proceedings to be paid in full, if less than \$ 25.

NEW YORK.

Limitation of Actions.—Actions upon a contract, obligation, or liability (express or implied) must be commenced within six years ; and on judgments and sealed instruments, within twenty years. Where there are open and mutual accounts the cause of action shall be deemed to have commenced from the time of the last item charged in the account on the adverse side.

Actions are commenced by serving a summons upon the defendant. The summons is subscribed by the plaintiff, or

his attorney, and directed to the defendant, and requires him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the State, within twenty days after the service of the summons. The plaintiff also inserts a notice in the summons, in an action on a contract for the recovery of money, that he will take judgment for a specified sum, if the defendant fails to answer in twenty days. In other actions, if defendant fail to answer in twenty days, the plaintiff will apply to the court for the relief demanded in the complaint. In actions affecting the title to real property, notice of a pendency of the action is given by filing with the clerk of the county a description of the property, and names of the parties.

Attachment.—The real and personal property of a debtor, may be attached—whenever such debtor, being an inhabitant of the State, shall secretly depart therefrom, with intent to defraud his creditors, or to avoid process of service, or keeps himself concealed with like intent; or whenever a person, not being a resident of the state, shall be indebted on a contract made within the state, or to a creditor residing within the state although upon a contract made elsewhere. The application for attachment must be in writing, verified by the affidavit of the creditor, and the facts and circumstances established by the affidavit of two disinterested witnesses.

The plaintiff must give security, before the issuing of the warrant, to the effect, that if the defendant recover judgment, the plaintiff shall pay all costs and damages awarded to defendant, and all damages he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least \$250.

Any other creditor may become a party to the attachment, whose debt is then due, on filing with the officer an affidavit, specifying the sum due him, over and above all discounts, and expressing in a petition, his desire to be deemed an attaching creditor.

Whenever a warrant of attachment shall be issued, notice must be given by advertisement in the State paper, in a newspaper printed in the city of New York, and one in the county to which any attachment shall be issued; which notice shall be published once a week for three months in the case of an absconding debtor, and for nine months in the case of a non-resident. No assignment, mortgage, or conveyance is valid as against creditors after the first publication of such notice.

If the debtor shall not appear and satisfy his creditors, within the time specified in the notice, the officer who issued the warrant, shall within three months after the expiration of the time so limited, appoint three or more fit persons to be trustees for all the creditors of such debtor; and every person

indebted to, or holding any property of the debtor, after such notice, must account and answer for the same to the trustees.

Articles which are perishable may be sold by order of the officer issuing the warrant.

Insolvent Law.—Every insolvent debtor may be discharged from his debts upon executing an assignment of all his estate for the benefit of his creditors. The petition must be signed by the debtor, and creditors residing in the U. S. whose claims amount to two-thirds of all the debts owing by him to creditors in the U. S. Each petition must be accompanied by affidavit, and shall specify the amount of the debt, and that it is justly due, or will become so at the time specified therein, and the nature of the demand, evidence, and consideration.

Creditors residing out of this state, may petition and unite in any petition, in the same manner as resident creditors; and affidavits must be sworn to by them, before a judge, or clerk of a court of record of the state in which they reside, duly authenticated under the seal of such court.

Any petitioning creditor purchasing a debt or demand against the debtor for less than its nominal amount, shall be deemed a creditor to the amount actually and in good faith paid by him for such debt or demand.

Duties of Trustees.—The trustees shall as speedily as possible, convert all the estate of the debtor into money; and within fifteen months from the time of their appointment call a general meeting of the creditors, by a notice similar to the one of their appointment, at not less than two, nor more than three months. At this meeting all accounts must be adjusted. And after payment of expenses, the remainder will be distributed among the creditors, in proportion to their respective demands.

Arrest.—Debtor may be arrested when the creditor establishes by affidavit, that a sufficient cause of action exists, and that there is a certain sum due him, specifying the nature and amount thereof; and that the defendant has been guilty of fraud in contracting the debt, or incurring the obligation, or in concealing or disposing of the property respecting which action is brought, or has removed his property, or is about to do so, with intent to defraud his creditors, or that he has rights in action or property which he fraudulently conceals, or is about to remove from the state; (and the above applies to non-residents as well as residents); or he may be arrested for any misconduct, neglect of office, or in a professional employment.

The debtor may appear before the judge who issued the warrant, and controvert by his own affidavit or otherwise, any of the charges alleged, and after a hearing of all the parties interested and their witnesses, if he is satisfied that the charges against the debtor are true, he may order him to be commit-

ted to prison, and there detained until discharged by law. Such debtor can be released on giving bail or surety to pay the debt and costs within sixty days ; or he may execute an assignment of all his property ; or enter into a bond to apply within thirty days for an assignment and discharge ; or give security that he will not remove or otherwise dispose of any property, with an intent to defraud his creditor, until the demand of the plaintiff shall be satisfied, or until three months has elapsed from the rendition of final judgment in the suit brought for the recovery of such demand.

The plaintiff must give security, before the order of arrest is issued, to the effect, that if the defendant recover judgment he will pay all costs and damages that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars.

Redemption.—Real estate, sold under execution or mortgage, may be redeemed by debtor within one year from time of sale, by paying the amount of purchase money, and ten per cent. interest from the time of sale. Fifteen months after sale, judgment creditor can redeem the same by paying the amount of purchase money, and seven per cent. interest.

Property exempt from attachment consists of spinning-wheels, weaving looms, stoves ; bibles, family pictures, school books, and books not exceeding fifty dollars in value, used as part of the family library, pew ; ten sheep, cow, two swine, and the necessary food for them ; provisions and fuel necessary for the use of the family for sixty days ; necessary wearing apparel, beds, bedsteads, and bedding, cooking utensils, &c. for the use of the family ; and tools, necessary for a mechanic, of the value of \$25. In addition, the necessary household furniture, tools, and team, to the value of \$250. ; land not exceeding quarter of an acre, used as a family burying ground, and certified, acknowledged, and recorded as such.

Homestead of a householder, of the value of \$1000, is exempted from sale. After the death of the householder, the exemption shall continue for the benefit of the widow and family, until the youngest child is twenty-one years of age, and until the death of the widow. To entitle any property to such exemption, a notice that the same is designed to be so held shall be executed and acknowledged by the person owning said property, which notice shall contain a full description thereof, and shall be recorded.

When sheriff thinks the premises worth more than \$1000, he shall summon six jurors, and if in their opinion the property can be divided without injury to the interests of the parties, they shall set-off so much of said premises, including the dwelling-house, as in their opinion is worth \$1000, and

the residue may be advertised and sold by the sheriff. But in case the premises cannot be divided, without detriment to the interests of the parties, they shall make an appraisal thereof, and unless the surplus over and above \$ 1000 is paid by the debtor or his family within sixty days, the sheriff shall advertise and sell the premises; and from the proceeds of such sale shall pay to the execution debtor the sum of \$1000, which sum shall for one year be exempted from execution. But no sale shall be made, unless a greater sum than \$1000 shall be bid therefor. Such homestead is not exempted from taxation, or sale for taxes.

NEW JERSEY.

Personal Actions of debt, on account, and upon case, must be brought within six years, on sealed instruments within sixteen years. Entry upon lands in twenty years.

Attachment.—A creditor, or his agent, or attorney, may obtain a writ of attachment against his debtor, by making oath that he believes such debtor is not a resident of the State at the time, or that he has absconded from his creditors; and that he owes him a certain sum of money.

If the plaintiff be a non-resident of the state, an affidavit must be made of the cause of the action, before a Commissioner, or notary public, in the state in which the creditor resides, or professes to be at the time.

Exemptions.—Household goods, chattels and tradesman's tools, to the value of \$ 200, and all wearing apparel, the property of a debtor having a family; which property is exempt as well after, as before the death of the debtor, for the use of the family. Besides the above a homestead of the value of \$ 1000; a notice of which must be recorded.

Arrest of Debtor.—The debtor cannot be arrested in any action founded upon contract express or implied, except the creditor make oath, that there is a debt due him—that the debtor is about to remove his property out of the jurisdiction of the court, with intent to defraud his creditors—that he has property or rights which he fraudulently conceals—and that he has assigned, removed, or disposed of such property, or is about to dispose of it, or that he fraudulently contracted the debt. The debtor is then ordered to be held to bail in such sum as the creditor shall swear to be due.

Insolvent Law.—Persons arrested or held in custody in any civil action, upon mense or final process, may obtain discharge from imprisonment, but not from debt, by taking benefit of the insolvent laws. Debts must be proved within eighteen months.

Assignments must provide for the equal distribution of the debtor's property among his creditors. No preferences are permitted excepting to mortgage and judgment creditors.

PENNSYLVANIA.

Limitation. All actions of debt founded upon any contract or lending without specialty, (except between merchant and merchant) must be brought within six years.

Attachment.—If affidavit be made, and filed by the creditor, of the fact of indebtedness, and that the debtor has absconded from his usual place of abode, or conceals himself to avoid process, his property, both real and personal (except such as is exempted by law) may be attached. The court will appoint trustees, not being creditors, in whom the entire estate of the debtor is vested, and who will divide the property *pro rata* among all creditors, who shall prove their claims.

Trustee Process.—Real and personal estate of a debtor, who does not reside within the State, can be attached, and the garnishee is bound to disclose on oath, &c.

A creditor residing in another State, may make affidavit before a Commissioner of the State of Pennsylvania, stating the amount of debt, after deducting all off-sets and discounts, and averring that the debt has not been paid, but that the same is still due and unpaid. Bond is required of plaintiff for payment of costs in case judgment is given to defendant.

Articles exempted from Attachment.—That in lieu of the property now exempt by law from levy and sale on execution, issued upon any judgment obtained upon contract, and distress for rent, property to the value of *three hundred dollars*, exclusive of all School Books, in use in the family, and family Bible, (which shall be exempted as heretofore) and no more owned by or in possession of any debtor shall be exempt from levy and sale on execution, or by distress for rent.

The law provides that the officer shall, if requested by the debtor, summon three competent men to appraise the property exempted, &c. ; and the property may be real or personal at the option of the debtor. An act of 1850 requires that three hundred dollars worth of property of any decedent shall not be taken from his widow or children, if he have them.

Arrest of Debtor.—No person can be arrested or imprisoned for debt, unless the creditor make oath, that a certain amount of money is justly due to him, and that the debtor is about to remove his property out of the jurisdiction of the court; or conceals it fraudulently; or has rights in action or interest in stocks, money, or evidence of debt which he refuses to apply to the payment of a judgment; or that he has assigned, removed, or otherwise disposed of his property to defraud his creditors; or is about so to dispose of it; or that he fraudulently contracted the debt.

The defendant, upon being arrested, may appear before the judge, and if he controverts the above charges, or pays the demand, or gives security that it shall be paid within sixty

days, or a bond that he will not remove his property, nor convey it away, or will within thirty days apply for the benefit of the insolvent laws, — he will be discharged.

Insolvent Law.—Persons resident within the State six months, or who have been in prison three months, may petition for the benefit of the act. Debtor can obtain his discharge, if he has not become bankrupt through gambling, lottery tickets, or has fraudulently concealed his property; but if he has done either, he is deprived of the benefit of the act, and becomes liable to imprisonment as for a misdemeanor. No other creditors are affected by the discharge of the debtor, except those who had due notice.

Assignments.—A debtor may make a conveyance of all his property (not subject to any lien) in trust for the benefit of his creditors. No preference can be given, except for the wages of labor, not exceeding in all one hundred dollars.

Redemption.—Lands sold on execution cannot be redeemed.

DELAWARE.

Limitation of Actions.—All actions of debt, account, assumpsit, and upon the case, must be brought within three years, except a mutual open account between parties, or upon a promissory note or bill of exchange, which may be commenced within six years.

Attachment.—A writ of attachment may issue against the property of a resident, or a non-resident of this State, upon oath of the plaintiff that the debtor is indebted to him in the sum of fifty dollars, and has absconded, or gone out of the government with intent to deceive or defraud his creditors. The writ runs against all the property, real or personal, of the debtor, or credits in the hands of a garnishee, whether he be a resident or not.

Upon the return of the writ of attachment, three persons must be appointed to adjust the claims of the plaintiff, and all other creditors who may become parties, after thirty days' public notice.

If a debtor is about leaving the State, with his effects, the creditor may have him arrested though the debt is not due.

Against a resident, one writ must be returned non est inventus, before an attachment can issue.

Exemption.—Property amounting to \$100, is exempted from execution, or distress for rent.

Imprisonment for Debt.—No free white citizen can be imprisoned, except upon oath of the plaintiff that the debtor is justly indebted to him in a sum exceeding five dollars, and that he verily believes that defendant has secreted, assigned, or disposed of property of the value of more than that amount, with intent to defraud his creditors; and specify and set forth

the supposed fraudulent transactions. A writ cannot issue to take the body of the debtor, unless it appears from the sheriff's return that he has no property within the county to satisfy the debt, or until the plaintiff has made oath to the same effect.

There is no redemption for lands sold on execution.

MARYLAND.

Actions of debt upon any contract or account, or lending without specialty, (except accounts as between merchant and merchant) must be brought within three years. All actions upon bonds, judgments, or writings indorsed, within twelve years.

Attachment.—A writ of attachment may be sued out against the property and effects of a debtor, who is either a non-resident, or has absconded, or secretes himself with intent to evade payment of his debts. Where the debtor is absent or has absconded, the creditor must make oath of the defendant's indebtedness, and that he either knows, or is credibly informed, or believes, that he has removed from his place of abode, with intent to defraud his creditors.

When the affidavit is made out of the state, it may be taken before a Commissioner;—the creditor making oath that the goods, or moneys, were delivered as charged, that he has never received satisfaction or security therefor, and that the balance claimed is justly due.—The clerk or store-keeper will also make oath to the delivery of the goods, and the non-payment of the money;—and such oaths must be made within twelve months from the delivery of the articles.

Exemptions.—Real estate acquired by marriage, for debts of husband; wages of a laborer to the amount of \$10 in the hands of an employer; slaves of the wife (acquired either before or after marriage) and her earnings, not exceeding \$1000; corn, bedding, gun, axe, and laborer's necessary tools, and household implements, requisite for the family.

Imprisonment for Debt.—The Constitution does not allow of imprisonment, except in case of fraud.

Insolvent Law.—If a debtor applies for the benefit of this act, he must make out a schedule of his estate, with a list of his creditors, under oath, to accompany the petition. A residence of sixty days in the State is required to enable a person to avail himself of this act. A trustee is appointed for the benefit of the creditors, and, upon the debtor's executing a deed to him of all his property, the debtor is discharged from all debts contracted up to the time of his application. All property, however, which he may afterwards acquire, by gift, bequest, descent, or devise, vests in his trustee for the payment of his debts.

The taking of a bill or note is no discharge of the debt.

VIRGINIA.

Limitation of Actions.—All actions upon the case, (except slander, and accounts which concern merchandise between merchant and merchant,) and all actions for account, or goods and chattels wrongfully detained, and replevin, shall be commenced within five years. All actions brought on a store account must be commenced in two years. A new promise, to prevent the operation of the statute of limitation, must be in writing.

Attachment.—Actions are commenced by the issuing of a warrant by a magistrate, on affidavit, that the debtor is removing, absconding, or otherwise conceals himself, so that process of law cannot be served on him, and such magistrate shall grant an attachment where the debt or demand exceeds the sum of ten dollars, or four hundred pounds of tobacco. Attachments are levied on the slaves and personal estate of debtor, wheresoever and in whose hands the same may be found. Attachment may be executed on Sunday, if the debtor is actually withdrawing his property.

A person within the state, holding goods, effects, or debts of a defendant who is absent from the state, can be restrained, by order of court, from paying or transferring the same to other persons.

On a special plea of set-off, judgment is forthwith rendered for the residue of the claim not controverted.

Imprisonment for Debt is abolished. The whole of the real and personal estate of the debtor (except such as is exempted by law,) is bound by the levy of a *capias ad satisfaciendum* from the time when execution shall be levied. The debtor is compelled by process of court to answer interrogatories, and to discover and surrender his estate.

On delivering up all personal estate, and on conveying all his real estate to the sheriff, and taking the oath of insolvency, the debtor is discharged from custody.

NORTH CAROLINA.

Actions of account, assumpsit, trespass, &c., must be brought within three years, except such as concern the trade of merchandise, between merchant and merchant, and their factors or servants.

Attachment may issue against the real and personal estate of the debtor, upon affidavit being made by plaintiff, that the debtor is absconding, or has removed, or is removing out of the county privately, or so absents or conceals himself that the ordinary process of law cannot be served on him; and further swears to the amount of his debt or demand.

Imprisonment for Debt.—A debtor can be arrested and held to bail, if plaintiff makes affidavit that he believes the debtor has fraudulently concealed his property, moneys, or effects, or is about to remove from the State.

The debtor may be imprisoned for any sum, but can have benefit of insolvent law and of prison limits.

SOUTH CAROLINA.

Actions of trespass, detinue, trover, replevin, debt, covenant, and case must be commenced within four years; titles to lands or possessions within ten years.

Attachment.—A creditor, wherever residing, may attach the real and personal estate of a debtor, who is either a non-resident, or, being a citizen, has been absent from the state more than one year, or who absconds or removes, so that process of law cannot be served on him. The creditor must give bond conditioned to pay all damages in case defendant recovers. The first writ must be first paid.

Exemptions.—Two beds, bedsteads and bedding; one spinning-wheel, two cards, and one loom; one cow and calf; implements of a farmer; tools of a mechanic; cooking utensils; twenty-five dollars worth of provisions; one horse; dwelling-house and fifty acres of land (if not within the limits of any city or town) and not exceeding \$500 in value.

Arrest of Debtor.—The body of the debtor may be arrested and imprisoned, when the debt exceeds twenty pounds current money. A person confined on mense process, or execution, may, on assigning his estate, be discharged in respect to the particular demands for which he is held in custody.

A resident creditor may hold debtor to bail, though the debt is not due, upon making affidavit that the debtor is about to remove from the state, and of his ignorance of such intended removal when the debt was contracted.

Insolvent Law.—The law provides that a person in custody, or on the prison limits, may, within one month from his arrest, on petition and surrender of property, and three months' public notice thereof, obtain his discharge.

GEORGIA.

Actions on notes and written contracts, must be brought within six years; upon open accounts, four years; sealed instruments, twenty years; foreign judgments, five years.

Attachment.—Suits may be commenced by attaching the property of the debtor, wherever to be found, in the case of non-residence, or where both debtor and creditor are beyond the State, or where debtor is removing, or absconds, or conceals himself. These facts, or one of them, must be shown to exist by oath, and a bond be given in double the amount sworn to be due, to which surety must be given. The con-

dition of the bond is, to pay all costs and damages which may be incurred for suing out the same. The attachment first served is to be first paid. Where a debtor is about to remove, or is removing out of the state, the creditor, on oath as to such fact, and of the indebtedness, may attach his property upon an obligation which is not due.

Exemptions.—Two beds, bedsteads and bedding; spinning-wheel, cards and loom; cooking utensils; mechanic's tools; provisions not exceeding \$30 in value; cow and calf; horse or mule, not exceeding \$50 in value; ten hogs; one yoke of oxen or one horse and cart. Besides the above, fifty acres of land are exempted from execution, if not in a town, city or village.

Imprisonment for Debt.—The constitution of this State provides that, unless there is presumption of fraud, no debtor shall be imprisoned for debt after having surrendered all his estate, real and personal.

ALABAMA.

Actions of debt, not under seal, of account, and upon the case, must be brought within six years; open accounts within three years; contracts under seal within ten years.

Attachment.—Suit is commenced by a writ of summons. The creditor may levy an original attachment on lands, goods, or money of the debtor, either actually, or by summons of garnishment in the hands of another, where the creditor swears either that the debtor absconds or secretes himself, or resides or is about to remove his property out of the state. The creditor is required to give a bond, in double the amount of the debt, to prosecute the attachment to effect, or pay the defendant damages, should the suit be proved to have been wrongful and vexatious.

An attachment may issue though the debt is not due.

Exemptions.—Furniture not exceeding \$150 in value; family portraits; library; one gun; two spinning-wheels; one loom; man's and woman's saddle; three cows and calves; twenty sheep; twenty hogs; 500 pounds meat; 1000 pounds fodder; 25 bushels wheat; all the meal on hand for use of family; one horse, or mule, or yoke of oxen; one ox or horse-cart; tools of mechanic, not exceeding in value \$200; two plows and gear; two hoes; 100 bushel corn; wearing apparel; 30 pounds wool or wool-rolls; 100 pounds ginned, or 400 pounds seed-cotton; all cloth on hand for use of family; 1000 pounds oats in the sheaf; 25 bushels potatoes. Besides the above, the homestead, not to exceed forty acres of land, or \$500 in value is exempted from execution.

Imprisonment of Debtor.—No imprisonment of debtor can take place, except on oath of the creditor, that the debtor is

about to abscond, or has fraudulently conveyed, or is about to convey his estate and effects, which he fraudulently withholds. On the plaintiff or his attorney making such oath, the debtor may be arrested and held to bail.

Insolvent Law.—None are excepted from the benefit of this law. Ten days' notice, if creditors reside in, and twenty if out of, the State, is given, by advertising in some newspaper.

MISSISSIPPI.

All *actions* of debt founded upon any contract, or rent, not under seal, or actions upon the case, and for the recovery of money, or goods sold and delivered, or work or labor done, or account stated, must be brought within three years. Actions on promissory notes and bills of exchange, must be commenced within six years; actions between merchant and merchant within four years; actions under seal within ten years; foreign judgments in three years.

Attachments may issue against the estate of a debtor, upon oath of the creditor, his agent or attorney, that the debtor has removed, is removing out of the State, or privately conceals himself so that process of law cannot be served, of the amount of the debt, and the grounds of belief, whether from a knowledge of the fact, personally, or by information.

An attachment may issue before the debt becomes payable, where creditor believes that his debtor is about removing with his property out of the State, or has removed, leaving effects, or debts in the hands of other persons, upon his making oath as to the amount of his debt, and the time when it will become payable.

Before granting a writ, the plaintiff must give a bond to pay all costs and damages that defendant may recover against him.

Redemption.—Land can be redeemed by either debtor or creditor within two years, by paying the purchase-money, with ten per cent. interest.

Exemptions.—Wearing apparel of family; tools of mechanic; agricultural implements of a farmer; books of a student; library of a minister; school books; 100 bushels corn; 20 bushels wheat; 800 pounds pork or bacon; one plow-horse not exceeding in value \$100; a cow and calf; arms and equipments.

Homestead, if in the country consists of 160 acres of land, if in town a house and lot valued at \$1500.

Imprisonment for Debt, on mesne and final process, has been abolished, except in cases of fraud.

LOUISIANA.

No *action* can be sustained, after the lapse of *one year*, to recover fees due a justice, notary, constable, or the compensation of a schoolmaster, or an instructor in the sciences who

teaches by the month, or the claims of innkeepers, boarding-housekeepers, retailers, workmen, laborers, servants, ship-owners for freight, officers, sailors for wages, to commence from the termination of the voyage, and claims for supplies and materials furnished vessels.

Actions upon bills, promissory notes payable to order or bearer, (except bank notes,) and all choses in action transferable by indorsement, must be commenced within five years.

Attachment.—There is no attachment upon mesne process, except upon the oath of the plaintiff, either that the defendant is about leaving, permanently, the state, without there being a possibility of obtaining judgment before his departure, or where such debtor has already left the state, never to return, or resides out of the State, or conceals himself to avoid citation, or that he is concealing or disposing of his property to avoid payment of the debt. Any species of property which can be seized, can be taken on execution, except such articles as are exempted by law for the use of the debtor and his family. Attachment may issue though debt is not due.

The property of the debtor is pledged to his creditors, and the proceeds of sale must be divided among them pro rata, unless there exist a privilege or mortgage.

Any person having property of the debtor may be summoned as a garnishee.

Respite.—If a debtor is unable to satisfy his debts at the moment, he may obtain a *voluntary respite*, where all the creditors agree, or *forced*, when only a majority consent, which is binding on those who do not agree. Such *respite* cannot exceed three years.

Imprisonment for debt is abolished, unless the plaintiff swears that the debtor has absconded from another State, to avoid payment of the debt, or intends leaving the State before judgment can be had against him, without leaving sufficient property to satisfy the demand.

TENNESSEE.

Actions of account, and upon the case, (except between merchant and merchant their factors or servants,) actions of debt for rent, detinue, replevin, and trespass *quare clausum fregit* must be brought within three years; and upon any contract or lending, not under seal, within six years. The same limitation applies to bonds, bills, and other securities transferable by law, after their assignment or indorsement, as is applicable to promissory notes.

Attachments may issue against the property of a debtor, resident in the state, whenever the sheriff shall return that defendant is not to be found in his county, or where a cred-

itor makes affidavit that the debtor has absconded, conceals, or removes himself, or is about to remove his property beyond the limits of the State, or is a non-resident.

Creditor must give bond in double the amount of his debt that the attachment is not wrongfully sued out. Sureties and accommodation indorsers may attach their principals, who may be removing, absconding, or carrying off their property, whether the debt for which they are liable is due or not. No decree to be made until the debt is due.

If the garnishee debtor does not appear and answer at the next term, after service of notice, a conditional judgment for the whole debt is rendered against him, to be made absolute at the following term, unless he appear and put in his answer.

Exemptions.—One cow and calf; one bedstead and bed, two sheets, two blankets, and one counterpane; if the family consists of six or more persons, one additional bed and bedstead, six chairs, one bible and hymn book, six knives and forks, six plates; one dish, one pot, one dutch oven, one spinning-wheel, one loom and gear, one pair of cotton cards; one axe; five sheep, ten hogs, all fowls and poultry; ten barrels corn, 300 pounds pork or bacon; one plow, one hoe, one set of gears for plowing, one farm horse, mule, or yoke of oxen; tools of a mechanic necessary in his trade; arms and equipments.

Imprisonment for debt does not exist in this State.

Lands levied on and sold, may be redeemed within two years after the sale by the debtor, on paying the amount bid and ten per cent. interest. Judgment creditor may also redeem by paying the amount bid, and interest thereon at six per cent., with ten per cent. in addition to the debtor.

KENTUCKY.

Limitations.—Actions brought on store accounts, for goods, wares, &c., sold and delivered, must be commenced in one year to be computed from the first day of January next succeeding the respective dates or times of delivery of the articles; actions upon the case, trespass, detinue, rent, or replevin, within five years.

Attachments may issue against one or more defendants, who, or some one of whom reside out of the state, or who has been absent from the state for four months, or has left the state with intent to defraud his creditors, or has left the county for the purpose of avoiding a summons, or so conceals himself that summons cannot be served upon him; or is about to remove his property or some portion of it from the state, not leaving sufficient for the claims of plaintiff; or who has or is about to dispose of his property with intent to defraud his creditors. An attachment may issue though debt is not due.

Exemptions.—Wearing apparel ; mechanic's tools not exceeding \$100 in value, and working beast of mechanic ; one plow and gear ; one axe ; one hoe ; two cows and calves ; two beds and bedding ; one loom, spinning-wheel and cards ; yarn, cloth, and carpeting manufactured by the family ; one pot and oven ; six plates ; six knives and forks ; six cups and saucers ; one coffee-pot and tea-pot ; one table ; six chairs ; one bible ; one yoke of oxen, or one working beast ; saddle and bridle ; poultry ; five sheep ; stove and cooking utensils not exceeding \$25 ; provisions and fuel for family for six months.

Arrest of Debtor.—No person can be arrested for debt or held to bail, unless the plaintiff file an affidavit with the clerk of the court, stating that he believes the defendant will leave the state, or move his property out of the same, before judgment can be executed, or abscond, or that the debtor has money, or securities, or evidences of debt in his possession, or in the possession of others for his use, and is about to quit the state without leaving sufficient property to meet the claims of plaintiff ; and the affidavit must state the nature and amount of claim, and that it is just.

Real estate, taken on execution, unless it brings two-thirds of its value, can be redeemed by the debtor at any time within one year from the sale, on payment of the purchase money, and ten per cent interest.

Insolvent Law.—Debtor's person is released on the delivery of a schedule of his property, and his taking the insolvent's oath. Jail limits are co-extensive with the State.

OHIO.

Action upon contracts not in writing, must be brought within six years ; upon specialty contracts, or promises in writing, within fifteen years.

A civil action must be commenced by filing a petition in the office of the Clerk of the Court, and causing a summons to be issued.

Attachments.—Creditor, or his agent or attorney, must make affidavit of the nature of the claim, that it is just, and the amount which the affiant believes plaintiff ought to recover ; and that the defendant, or one of several defendants, is a foreign corporation, or a non-resident ; or has absconded with intent to defraud his creditors ; or has left the county of his residence ; or conceals himself to avoid the service of a summons ; or is about to remove his property, or a part, out of the jurisdiction of the court, with intent to defraud his creditors ; or is about to convert his property, or part thereof, into money, for the purpose of placing it beyond the reach of his creditors ; or has property, or rights in action, which he conceals ; or has assigned, removed, disposed

of, or is about to dispose of, his property, or part thereof, with intent to defraud his creditors; or fraudulently contracted the debt. But no attachment shall be granted on the ground that the debtor is a foreign corporation or a non-resident, other than upon a debt or demand arising upon contract, judgment, or decree.

Plaintiff must give sureties, not exceeding double the amount of his claim, that he will pay the defendant all damages he may sustain by reason of the attachment, if the order be wrongfully obtained.

Defendant may discharge attachment any time before judgment, by giving sureties in double the amount of plaintiff's claim, that he will perform the judgment of the court.

The court, or any judge, may, on application of the plaintiff, and on good cause, appoint a receiver, who shall take into his possession all notes, due bills &c., that have been taken by the sheriff or other officer, as the property of defendant. Property of a perishable character &c., may be sold by order of court, during the pendency of the suit. Garnishees must appear and make disclosures, or may pay money &c., to sheriff, or into court.

Arrest.—A defendant can be arrested before and after judgment, when the plaintiff, his agent or attorney, shall have made affidavit of the nature of the claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars: 1st—That the defendant has removed, or begun to remove his property out of the jurisdiction of the court, with intent to defraud his creditors: 2nd—That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors: 3d—That he has property, &c., which he fraudulently conceals: 4th—That he has assigned, removed, or disposed of, or has begun to dispose of his property, with intent to defraud his creditors: and 5th—That he fraudulently contracted the debt. The affidavit must also contain a statement of the facts claimed, to justify the belief in the existence of one or more of the above particulars.

When actions are barred by lapse of time in another State, between non-residents, no action can be maintained thereon in this State.

Debtor may have stay of execution on five dollars, 60 days; not exceeding twenty, 90 days; not exceeding fifty dollars, 150 days; over fifty dollars, 240 days.

Plaintiff, if a non-resident in the county in which the action is to be brought, must, before commencing an action, furnish a surety for costs.

Exemption.—The earnings of judgment debtor for personal services at any time within three months next preced-

ing the order of judge, cannot be taken, when by debtor's affidavit, or otherwise, such earnings are necessary for the use of a family supported wholly, or partly by his labor.

Exemptions.—Homestead of the value of \$500. A person not the owner of a homestead, if the head of a family, can hold, exempt from execution, mechanical tools, or a team, or farming utensils, not exceeding \$300, in addition to the chattel property now by law exempted, which is as follows: wearing apparel, beds, bedsteads, and bedding of family; stove; fuel for sixty days; one cow, but if debtor own none, then, household furniture, of the value of \$15·00; two swine, or the pork, or, furniture of the value of \$6·00; six sheep, and food for them for sixty days, or, the wool and cloth, or, in lieu thereof, furniture not exceeding \$10 00; the bibles, hymn books, school books, and family pictures; provisions, designed for the family, amounting to \$40·00; and other articles of furniture for family not exceeding \$30·00; the tools and implements of debtor, whether mechanical or agricultural, not exceeding \$50 00. The above articles to be selected by debtor.

INDIANA.

Actions on accounts and contracts not in writing, and rents, and profits of real property, injuries to property, and relief against frauds, must be brought within six years.

All actions on bonds, bills, notes, or any contract in writing; and all judgments and decrees of any court of record, may be brought within twenty years.

Attachment may issue whenever the creditor makes oath that the defendant, or one of several defendants, is a foreign corporation, or a non-resident; or, where the defendant, or one of several defendants is secretly leaving, or has left the state; or so conceals himself that a summons cannot be served on him; or is removing or about to remove his property from the state; or has sold or is about to sell, or permitted to be sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat, hinder, or delay his creditors; and the plaintiff or some person in his behalf, shall make affidavit, showing the nature of the plaintiff's claim; that it is just; the amount he believes plaintiff ought to recover; and that there exists some one of the grounds for an attachment above enumerated.

Exemptions.—Property whether personal or real, of the value of \$300, is exempted from attachment.

Any person holding property of the debtor, may, on oath of the creditor, be compelled to appear and answer all questions put to him in relation to it.

Arrest of Debtor.—The debtor may be arrested on the creditor's filing an affidavit of his right to secure debt or

damages, and that he believes debtor intends defrauding him by leaving the State, or concealing his effects. If bail is not given, debtor is committed to prison. Debtor may, however, procure his discharge, by taking the oath of insolvency. Property afterwards acquired is held liable.

The debtor may, by giving bail, procure a stay of execution on sums from six dollars, to any amount, and varying from thirty to one hundred and eighty days.

Property taken on execution must be appraised, and sold for its fair value. Lands sold on execution cannot be redeemed.

ILLINOIS.

All actions founded upon any promissory note, simple contract in writing, judgment, bond, &c., must be brought within sixteen years. All actions founded upon accounts, bills of exchange, orders or promises not in writing, must be brought within five years.

Attachment.—A creditor, or his agent, may obtain a writ of attachment, by making complaint on oath or affirmation to the clerk of the circuit court, that the debtor is indebted to him in a sum exceeding twenty dollars, and that he believes that it is his intention to depart from, or that he has departed from the State, or avoids the process of service by concealing or removing his property, or that he is a non-resident of the State. The creditor, before the attachment issues, must execute a bond to prosecute the suit and pay all damages, should it be decided against him.

The maker of a note must be prosecuted to insolvency, unless such suit would be unavailing, before a suit can be instituted against the indorser.

Exemptions.—Beds, bedsteads, bedding and cooking utensils; household furniture of the value of \$15; spinning wheels, cards, loom, stove; cow and calf; two sheep, with the fleeces of two sheep for each member of the family; sixty dollars worth of property; fuel and provisions for three months; lot of ten acres for a burying ground, and recorded as such. Upon the death or desertion of the head of the family, the family shall be entitled to the like exemption.

In addition to the above a *Homestead*, consisting of a lot of ground and the buildings thereon, occupied as a residence and owned by the debtor, being a householder and having a family, to the value of \$1000.—In its general features this law resembles the New York Homestead Law—(see p. 80.)

A *plaintiff residing abroad* may make affidavit before a commissioner of the State, or notary public, of the sum due, and that the same will be in danger of being lost, or that the benefit of whatever judgment may be obtained will be in danger, unless defendant be held to bail.

Imprisonment for debt is abolished, except where the debtor

refuses to deliver up his property, or there is strong presumption of fraud. The debtor, on delivering up all his property, may take the benefit of the act of insolvency.

Redemption.—Lands sold upon execution can be redeemed by the debtor in twelve months after sale, by paying the purchase money and ten per cent. interest.

MISSOURI.

Limitations.—All actions founded upon any writing sealed or unsealed, for the payment of money must be brought within ten years; and all actions upon open accounts for goods, wares and merchandise, and for store accounts, must be brought within two years; other actions upon account within five years; bonds, judgments and decrees in twenty years.

Attachment may issue from any court, other than a justices, where the sum demanded amounts to fifty dollars.—

1. Where the defendant is not a resident of this state. 2. Where the defendant is a corporation, whose chief office or place of business is out of this state. 3. Where the defendant conceals himself. 4. Where the defendant has absconded. 5. Where the defendant is about to remove his property out of the state. 6. Where the defendant has fraudulently conveyed his property, or concealed, or assigned, or is about to conceal or dispose of his property so as to hinder or delay his creditors. 11. Where the cause of action accrued out of the state, and the defendant has absconded, or recently removed his property into this state. 12. Where the damages for which the action is brought, are for injuries arising from the commission of some felony or misdemeanor. 13. Where the debtor has failed to pay the price of any article, which, by contract he was bound to pay upon the delivery.

An attachment may issue on a demand not yet due, in any of the above cases.

Attachment may issue on demands for less than fifty dollars, and not less than five, when in addition to the affidavit made by the plaintiff that he has a just demand, and that the amount he believes he ought to recover, after allowing all just credits and set-off is — dollars, and that he has good reason to believe and does believe in the existence of one or more of the preceding causes, which would entitle him to sue by attachment, and it shall be stated by the affiant, that the defendant has not any goods or chattels, within this state liable to attachment.

An affidavit before a judicial officer of another State authorized to administer oaths, is good in this State for the purpose of granting an attachment. It must state “that the defendant is justly indebted to the plaintiff, after allowing all set-offs, in the sum of \$—, and on what account the same

accrued, and also that the affiant has good reason to believe, and does believe the existence of one or more of the causes which authorize a suit by attachment."

Either party may, on motion, procure an order to examine the adverse party.

Imprisonment for debt is abolished, except in cases of fraud.

MICHIGAN.

All actions of debt founded upon any contract, or liability not under seal, except such as are brought upon the judgment or decree of some court of record; all actions upon judgments, other than the above; all actions for arrears of rent, assumpsit, or upon the case, or of waste must be brought within six years; actions upon other contracts within ten years.

Attachment.—A creditor, on making oath, that he believes his debtor has absconded, or is a non-resident, and has not resided in the State for three months, or has concealed himself, or is about to convey or remove any of his property, with intent to defraud his creditors, may obtain a writ of attachment in the circuit or county courts, where the debt, over and above all legal set-offs, amounts to one hundred dollars. If there has been no personal service, but property has been attached, notice of such attachment must be published in the county for six successive weeks. A person holding goods or credits of the debtor may be summoned as garnishee, and if he do not appear, or there is cause to fear that he may abscond, the court may issue a warrant for his arrest.

Where the plaintiff is a non-resident of the State, the writ must be indorsed by some respectable inhabitant of the State.

The value of property exempted from execution amounts to \$500, consisting of spinning wheels, weaving looms, stoves, pew, cemeteries, fire arms; \$150 in books, and all family pictures. To householders ten sheep, two cows, five swine; provisions for six months; \$250 in furniture; hay, grain, &c., for six months. Tools, stock, teams, &c., necessary for his trade or profession; besides the homestead.

Homestead.—Forty acres of land, and the dwelling-house thereon, to be selected by the owner, or a town lot and dwelling-house, owned and occupied by any resident of the State, and not exceeding fifteen hundred dollars in value,

Arrest of Debtor.—No person can be arrested or imprisoned for debt, unless the creditor establishes, on oath, the amount and nature of the debt, and that the debtor is about to remove his property beyond the jurisdiction of the court, that he has property which he refuses to apply to the payment of the debt, that he has assigned, removed, or is about to dispose of the same, with intent to defraud his creditors.

Debtor may have stay of execution, on \$25 for ninety

days ; \$50 for six months ; and when the damages exceed \$50 ten months.

Mortgages may be foreclosed either in chancery or in county courts, or by advertisement, and can be sold at any time without redemption within one year ; if sold by order of court or advertisement they may be redeemed within one year. Real estate sold on execution can be redeemed within the same time.

Insolvent Law.—Any inhabitant of this State can petition for the benefit of this act, by an assignment and delivery of all his property to his assignees, to be equitably distributed among all his creditors.

ARKANSAS.

Actions upon promissory notes, and other writings, not under seal, must be brought within five years ; on sealed instruments, judgment and decrees, within ten ; and all actions of account, assumpsit, or case, founded on any other contract in three years.

Attachment.—Every person having a real, subsisting debt or demand against another, in the nature of contract, not exceeding one hundred dollars, can obtain a writ of attachment, on making and filing, before any justice of the peace, an affidavit, that the debtor is about to remove himself, or his effects, out of the state, or conceals himself so that the ordinary process of law cannot be served on him, or is a non-resident of the state.

The service of the writ on the garnishee shall be by reading the writ to him, or delivering him a copy at his residence.

Plaintiff shall enter into bond to the defendant, conditioned, that if he disprove or avoid the debt, he will respond to such damages as shall be awarded against him.

The writ first levied shall be first paid according to priority.

Imprisonment for Debt.—No person can be imprisoned on mesne or final process, issuing from any court, or officer, except where fraud is alleged by the plaintiff, and supported by his affidavit, and the affidavit of some disinterested person.

Property exempted from execution, consists of wearing apparel, tools and implements of trade of a mechanic ; and, when owned by a married man, the wearing apparel, and such necessary beds, bedding, and household furniture, as may be necessary for the family ; one horse, one cow and calf, farming tools, &c., if the person is a farmer.

Interests in land, goods and chattels, slaves, rights and shares in an incorporated company, bills or evidences of debt issued by any moneyed corporation, may be taken and sold, after notice has been given by advertisement, for at least twenty days.

DISTRICT OF COLUMBIA.

Actions (the same as Maryland.)

The laws of Maryland, as they existed in 1801, continue in force in the District, unless where modified or repealed by Acts of Congress.

No person can be held to bail in any civil suit, unless an affidavit, filed by the plaintiff, or his agent, stating the amount he believes to be due, and that the debt was contracted by fraud or false pretences, or that the defendant is concealing or has concealed his property, in the District or elsewhere, or is about to remove the same, or his residence, or abscond in order to evade the payment of his debt.

Imprisonment for Debt.—No person can be held to bail, or imprisoned, in any civil action, where the debt, exclusive of interest and costs, is less than fifty dollars, or where he has been held to bail, or where the plaintiff, after judgment has been rendered in his favor, shall make oath that the defendant has conveyed away, or otherwise disposed of, or has or is about to remove, his property, with intent to hinder or delay the recovery or payment of his debts.

FLORIDA.

Actions of account and upon the case, and assumpsit must be brought within five years; on book accounts, within two years from the times of the delivery of the several articles.

Attachment may issue upon affidavit of party applying therefor, that the debt or demand is actually due, or to become due within nine months; and that the defendant is or intends removing or absconding; or conceals himself; or is secreting or fraudulently disposing of his property; and the plaintiff is obliged to give bond, with good and sufficient sureties, that he will pay all damages sustained by the defendant, if said writ of attachment has been improperly sued out.

On proper affidavit, a writ may issue at any stage of the suit.

Exemptions.—Wearing apparel and bedding; kitchen furniture; horse, saddle, harness, and vehicle of clergymen, not exceeding \$100 in value; horse, saddle and bridle, medicine and books of physician, not exceeding \$100; horse and gun belonging to a farmer who is cultivating five acres of land, not exceeding \$100; a housekeeper with a family may hold property not exceeding \$100 in value; a mechanic, artist, dentist, or tradesman may hold his working tools or instruments not exceeding \$100 in value; fisherman, pilot, or resident may hold his boat and gun, not exceeding in value \$200. Every white citizen, male or female, being a householder, shall be entitled to a homestead, not exceeding one hundred and sixty acres of land, or town or city lot, with the appurtenances, being the residence of such head or a family.

The process of garnishment cannot be resorted to in this State until after judgment rendered—but no summons will be issued until the plaintiff or his agent has made affidavit that he does not believe that the defendant has sufficient available property to satisfy the judgment against him.

WISCONSIN.

Actions of Debt founded upon any contract, not under seal, (except judgments of some court of record) must be brought within six years; contracts under seal, &c., twenty years.

Attachment may issue from the county and circuit courts, when the debt exceeds one hundred dollars, against the property of the debtor, if the plaintiff shall make affidavit that the defendant is justly indebted to him, the amount of the debt over and above all set-offs, and that he has absconded, or is about to abscond, or is concealed, or has assigned, disposed of, or concealed, or is about to conceal his property, or has removed, or is about to remove his property, with intent to defraud his creditors, or fraudulently contracted the debt, or is not a resident of the state, or is a foreign corporation. Defendant may appear at the time of making the affidavit, and controvert any of the charges alleged.

In justices' courts, under similar circumstances, an attachment may issue, when the amount due, as stated in the affidavit, exceeds five dollars, and not more than fifty.

Imprisonment for Debt.—The Constitution abolishes imprisonment for debt, arising out of, or founded on a contract.

Insolvent Law.—A debtor, on making affidavit that he has “not disposed of, or made over any part of his property for his future benefit, or to defraud his creditors, and that he has not acknowledged a debt for a greater sum than he honestly owes, nor paid, nor compounded with any of his creditors,” is discharged from his debts. All the creditors, who think fit to become parties to the conveyance, share alike in proportion to their respective claims.

Exemption.—Family bible, pictures, school books or library, pew in church, rights of burial, apparel of debtor and family, beds and bedding, stoves, and household furniture not exceeding \$200; two cows, one yoke of oxen, and a horse; or instead of them, a span of horses; ten sheep and the wool, food for the stock one year; one wagon, cart, or dray; one sleigh, one plow, one drag; and other farming utensils not exceeding \$50; provisions and fuel for family for one year; the tools of a mechanic not exceeding \$200; library of professional man not exceeding \$200.

Homestead.—Forty acres of land, used for agricultural purposes, with the dwelling-house; or town lot, not exceeding in value \$1000, with dwelling-house thereon.

Redemption.—The debtor may redeem real estate in two years, on paying the amount bid, and ten per cent. Judgment debtor may redeem land within two years, on paying the amount bid, and seven per cent. Any of his creditors may do the same within three months next ensuing.

IOWA.

Actions founded on written contracts, for injury to property, or for relief on the ground of fraud, must be brought within five years; actions founded on written contracts, judgments of courts, and recovery of real property, must be brought within ten years; and if action is founded on a judgment of a court of record, then twenty years.

Attachment.—An attachment may issue, upon affidavit being made by plaintiff that the debtor is a non-resident of the State, or that he is about to remove, or dispose of his property, or that he has absconded, or is about to abscond, or that he has property not exempt from execution, which he refuses to give in payment of the debt, or as security. Creditor must give a bond to respond to damages, if suit is decided against him.

Exemptions.—Wearing apparel with trunks; musket or rifle; tools, instruments, and books used in his business or profession; horse and wagon used by a professional person; libraries, family bibles, portraits and paintings; a pew, and burying ground. If the debtor be the head of a family, there is a further exemption of a cow and calf, horse, fifty sheep, and the wool, five hogs and the pigs, and food for sixty days; flax, 100 yards of cloth; furniture not exceeding \$100; bed and bedding for every two in the family, and provisions and fuel for six months; and the earnings of the debtor within 90 days next preceding the levy.

Homestead.—Half an acre with house, if within a town plat, and not more than forty acres if not. If the value is less than \$500, it may be enlarged until it reaches that amount.

Imprisonment for Debt.—The Constitution does not allow of imprisonment for debt in any civil action on mesne or final process, unless in case of fraud.

TEXAS.

Personal actions are limited to two years. Actions of debt on contract, in writing, to four years.

Attachment.—An attachment may issue, upon affidavit being made by plaintiff, or his agent or attorney, of the amount of the debt, and that his debtor is not a resident of the state, or that he is about to remove himself or his property out of the state, so that process of law cannot be served on him, and plaintiff probably lose his debt. The attachment may be made even if the debt is not due. Improved lands are not

to be taken, unless the personal property and unimproved lands prove insufficient to satisfy the demand. Defendant may retain possession of slaves, and other personal property, by giving a bond, for their forthcoming on the day of sale.

Homestead exempted from execution consists of fifty acres of land in the country, or land and house in town, city, or village of the value of \$500. Articles of household necessity, not exceeding \$200; implements of husbandry, \$50; tools, books, five cows, one yoke of oxen, one horse, twenty hogs, and one year's provision, are also exempted.

Imprisonment for debt is not allowed, except in cases of fraud, avoidance, or concealment.

CALIFORNIA.

An action upon a contract, obligation, or liability, not founded upon any instrument in writing must be brought within two years; and an action upon a contract, or liability, founded upon an instrument in writing within four years.

Attachment.—A writ of attachment may be sued out against the property of the debtor, upon affidavit being made by the creditor, his agent, or attorney, that the debtor is indebted to plaintiff in the sum of two hundred dollars, or more, stating the amount, above all legal set-offs, and that he has reason to believe that he has absconded, or intends to abscond from the state, or is concealed; or has removed, or is about to remove his property, or has conveyed, assigned, or disposed of, or is about fraudulently to convey or conceal the same, to the injury of, and with intent to defraud his creditors. Bond is required of the plaintiff, to pay all damages, if suit be decided against him. Attachment may issue, on affidavit of plaintiff, though debt is not due. In the matter of attachment, the demand must grow out of a California contract, though the debtor or creditor be a citizen or foreigner.

Arrest of Debtor.—The Constitution provides that no person shall be imprisoned for debt, in any civil action on *mesne* or *final* process, unless in case of fraud.

Homestead.—Land with dwelling-house, not exceeding \$5000 to be selected by the debtor; and also personal property. If the head of the family die, the same benefits accrue to wife and children.

Real estate sold on execution, can be redeemed in six months after sale, by paying the amount for which it was sold, with eighteen per cent. interest on the amount.

When debtor is arrested, the officer must notify the plaintiff, and defendant can demand a trial within three hours; and in case of delay of more than three hours, not caused by another trial, the defendant is discharged.

DEFENCE OF DEBTOR.

IN the contracting of a debt there must be, at least, two contracting parties. And as no man can be made a contracting party without his free will and consent; so no man can, except with his consent, or by his own act or default, (or that of his agent, which is in fact his) become debtor to another.

A debt may be admitted to be wholly due, and yet the party making the admission may refuse to pay it, on the ground that he has a claim against the other party which he is entitled to set-off against it. If the amount of the set-off does not equal the demand, then he is justifiable, in setting off his claim against that made against him, and paying or tendering the balance.

The amount of a debt may be admitted, and yet the party refuse to pay it, on the ground that it is not due, the time when it was to be paid not having elapsed.

Where a debt is disputed in part, but a portion of it admitted, the objection to the disputed part may either be mentioned and stated to the party claiming it, and an offer made to pay the amount admitted; or it may, in some cases, and under certain circumstances, be prudent to state generally (without stating the grounds of objection) that the portion disputed will not be paid, but offering to pay the admitted amount. Care must be taken, where a portion of an account or of a demand is objectionable, not to make a general promise of payment of the account in demand, but to limit such promise to the unobjectionable portion. So, also, it is advisable where an account has been rendered, to parts of which objections are entertained, not to retain the account so rendered for a length of time, without expressing a dissent from its correctness. As, in some cases, the fact of an acceptance of such account, and keeping it for a length of time without stating any objection, may be considered an admission of its correctness.

The grounds on which a total denial of a debt may rest are:—

1stly, The debt so denied to be due may never have existed, or may never have been contracted by the party from whom payment is sought.

2ndly, As it may have been at one period a *bona fide* subsisting debt, but lapse of time may legally (we do not say morally) justify a denial of and refusal to pay it.

3rdly, It having been a good and subsisting debt, the *laches* (that is neglect) of the creditor may (by operation of law) have extinguished it.

4thly, Or it may be a demand to which the person from whom it is claimed may apparently be liable, but which the law does not recognise, and the amount of which cannot be enforced for want of consideration, or in consequence of the transaction out of which it arose being illegal.

Claims which are frequently denied, are made against a party for the amount of goods or articles supplied to another upon the recommendation or introduction of such party. When and under what circumstances a person may be liable for the debt of another has already been stated. (p. 44.)

Where a party promises to pay *when convenient*, if it be proved that he is able to pay, the law will consider ability as amounting to convenience, and judgment will be given accordingly.

Cases may arise in which, under certain circumstances, a prudent consideration for one's pocket may induce the settlement of a demand, though no legal liability may exist;—as where a suit is brought, and it will cost the party more to contest it, even if he gains his case, than the amount claimed.

The party making the claim, must *prove* it. If the creditor proves his claim, and the debtor seeks to justify his non-payment or non-performance, upon any grounds, he must be prepared to prove them.

As, when a party is sued for a sum of money for goods sold, the proof of the purchase and delivery will entitle the creditor to a verdict; but if a credit of a certain period were given, and that period be not elapsed at the time of the action brought, that will be matter for the debtor to prove.

So, in an implied contract, if an action be brought against a carrier for non-delivery of a parcel, proof of the parcel having been given into his charge, that a consideration either was or was not to be paid for its delivery, and the non-delivery, together with the value, will be sufficient on the part of the party seeking to enforce payment.

The non-delivery may have been caused by accident, or the act of God, and through no negligence of the carrier: this must be proved on his part.

Where the debt is barred by the statute of limitations, this must be shown and taken advantage of by the debtor.

So, proof of such neglect on the part of the creditor, as would in law extinguish the debt, or other proof, such as having looked to and dealt with a principal, where there was a surety, by which the surety was discharged, is proof on the part of, and to be made by, the party sought to be rendered liable.

Where it is contended that no consideration existed for a debt, that fact, being pleaded, throws the burthen of proof (in law) on the part of the person suing or seeking to enforce his claim.

Illegality of consideration must be shown and proved by the defendant or party sought to be made a debtor. Where a certain portion of a demand has been admitted and offered to be paid, and rejected, and an action brought to recover the full amount, the debtor will have (if desirous of saving himself from costs) to prove the actual sum tendered to the creditor.

On the subject of tender, we may observe that the exact amount intended to be offered and paid should, *(without any qualification, such as "if you will take this in full I will pay you," or "take this and give me a receipt in full,")* be tendered, that is, produced, in lawful coin, and held out to, shown and offered to the creditor, or his attorney, in the presence of a disinterested witness.

Supposing a debt to have been established, defence is at an end; and it then becomes the interest of the debtor to settle it in the most beneficial and favorable manner to himself, and on the best terms he can make, keeping it always in view that his creditor has the means of enforcing it against him. And, also, recollecting that where a *bona fide* debt really subsists, any attempt at denial of it, or defence for the purpose of gaining time, only adds costs and expense, which must ultimately fall on him.

PART III.

COMMERCIAL AND DOMESTIC LAWS.

AFFIDAVITS.

An affidavit is an oath in writing, signed by the party deposing, sworn before, and attested by, the person who has authority to administer the same. The place of abode, and the addition of the person making such affidavit, should be annexed thereto, and should be full, certain and positive.

Affidavits and oaths, when authorized by law, may be taken in the same manner that oaths and affirmations are administered in open court, and they may be taken before any magistrate authorized to administer oaths, unless where the statute makes other provision.

Affidavit of demand against a Non-Resident Debtor.

COMMONWEALTH OF —, County of — ss.

Before me, Benjamin H. Currier, Esquire, Commissioner in and for the said Commonwealth, appointed by the governor of the State of —, to take the acknowledgment and proof of deeds and other writings under seal, to be used or recorded in the said State of —, and to administer oaths and affirmations, came I. R. B., of —, in the county of —, and Commonwealth aforesaid, who being by me duly sworn, deposes and says, that H. R. A., lately of said —, but now resident of —, in the county of —, and State of —, is justly and bona fide indebted unto him, the said I. R. B., in the just and full sum of *fifty seven dollars and fifty cents*, and that he has given credit to said H. R. A. for all payments and off-sets

to which he is entitled, and that the balance claimed is justly due, according to the foregoing account, and that said account is correctly stated.

Sworn and subscribed this — day
of —, A. D. 1858. Before me, I. R. B.
BENJAMIN H. CURRIER,
Commissioner for the State of —.

Affidavit for Goods sold and delivered.

STATE OF —, County of — ss.

A. B., of —, in said county, being duly sworn, deposes and says, that C. D., of —, in the county of —, and state of —, is justly and truly indebted unto him, this deponent, in the sum of — dollars, for goods sold and delivered by him to the said C. D., and that he has given credit to the said D. for all payments and off-sets to which he is entitled, and that the balance claimed is justly due, according to the foregoing account; and that said account is correctly stated. A. B.

Sworn and subscribed this ninth day of —, A. D. 1858. Before me,
B. H. C., Commissioner for the State of —.

Affidavit of Goods sold and delivered, when made by a Clerk.

STATE OF —, County of —, ss.

A. B., of —, in said county, being duly sworn, deposes and says, that E. F., of —, in the county of —, and state of —, is justly indebted unto the said C. D. for goods sold and delivered to the said E. F., which goods were packed and delivered to him by this deponent. And this deponent further saith, that the account hereto annexed was duly copied from the books of the said C. D., and examined by him, this deponent, and that full credit has been given said E. F. for all payments and off-sets to which he is entitled, and that the balance claimed is justly due, according to the foregoing account, and that said account is correctly stated. A. B.

Sworn and subscribed this ninth day of — A. D. 1858. Before me,
B. H. C., Commissioner for the State of —.

STATE OF —, County of —, ss.

A. B., of —, in said county, being duly sworn, deposes and says, that he is the owner (or shipper) of the coal mentioned and described in the within copy of the clearance of the boat —, and that the actual weight of the same is therein truly stated, at — thousand pounds. A. B.

Sworn to before me, this — day of —, 1858.
G. H., Collector of Tolls at —.

STATE OF —, County of —, ss.

Personally appeared the above-named A. B., and made solemn oath, [or solemnly affirmed] that the foregoing declaration [certificate, &c., as the case may be] by him subscribed, is true. A. B.

Sworn to before me, this — day of —, 1858.
C. D., Justice of the Peace.

STATE OF —, County of —, ss.

A. B. and C. D., of —, being by me severally sworn, depose and say, and each for himself deposes and says, that the facts stated and set forth in the foregoing certificate by them signed, are true. A. B.

Sworn to before me, this — day of —, 1858. C. D.
G. H., Justice of the Peace.

STATE OF —, County of —, ss.

A. B., of —, being duly sworn, says that the facts set forth in the above petition, subscribed by him, are true. A. B.

Sworn to before me, this — day of —, 1858.
G. H., Justice of the Peace.

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**DEPOSITIONS.**

*Depositions taken under a Commission.*

In taking a deposition under a commission, the magistrate should carefully observe the directions and regulations of the Court from which the

commission issues, which are usually embraced in the commission or sent out with it. Many Courts have established particular rules to be observed in executing Commissions; and in some States such rules are provided by statute; and care should be observed to follow the statutes regulating the manner of taking the same, of the State where they are to be used. In all cases in taking depositions the oath is first to be administered to the deponent, as follows:—

*Oath.*

You solemnly swear [or affirm] that in answer to the interrogatories and cross-interrogatories that may be put to you from this commission, you will testify the truth, the whole truth, and nothing but the truth. So help you God.

[*The deposition is usually commenced in this form.*]

I, A. B., of —, in the county of —, and state of —, gentleman, of the age of — years, on oath depose and say, in answer to the several interrogatories and cross-interrogatories annexed to the foregoing commission, as follows, viz:—

“To the first interrogatory, I answer, &c.

“To the second interrogatory, I answer, &c.

After the answers are reduced to writing, the deponent will sign them.

Sometimes by the requisition of the Commission, or by the custom of the State, the deponent may be sworn after his testimony is reduced to writing and signed; and then the oath may be as follows:—

*Oath after signing.*

You solemnly swear that these answers, by you subscribed, to the several interrogatories which have been submitted to you, contain the truth, the whole truth, and nothing but the truth, relative to the matters inquired of. So help you God.

*Return of Commission when from State Court.*

STATE OF —, ss.

On this — day of —, in the year —, by virtue of the foregoing commission, I caused the above named A. B., the deponent therein mentioned, to come before me —, in the said county of —, and he being then and there duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories thereto annexed, gave the foregoing answers, by him subscribed in my presence, and the same were by me reduced to writing in his presence.

E. F., Commissioner of the State of —.

## INSOLVENCY.

IN many of the States, provision is made whereby an insolvent debtor upon the surrender of all his property, may obtain a discharge from his debts and liabilities.

Insolvency may be of two kinds, voluntary and involuntary. Voluntary insolvency is where the debtor desires to avail himself of the insolvent laws, and petitions for that purpose: and involuntary, is where his creditors force him into insolvency.

The circumstances which will entitle a debtor or his creditors to resort to the aid of the insolvent laws, are, of course, in some degree peculiar to each State. Generally, in cases of voluntary insolvency, the debtor must owe a certain amount, and his petition to be declared insolvent must set forth that he is indebted to that amount, and that he is unable to pay the same. The usual grounds upon which a creditor petitions to have his debtor declared insolvent, and his property taken possession of and distributed among his creditors, are, that the debtor has fraudulently secreted or conveyed away his property, or that he has suffered it to be attached and to remain so for a certain length of time without dissolving the same, &c.

The proceedings in insolvency are had before *judges*, or *commissioners in insolvency*, or *masters in chancery* as they are called, appointed for that purpose. The proceedings are commenced by petition, in which the debtor or creditor sets forth the facts upon which his prayer for relief is founded

Upon the petition of the debtor, no proof or examination is ordinarily had, to ascertain the truth of the facts set forth, but the commissioner immediately issues a warrant to the messenger to take possession of the debtor's property, and to call a meeting of his creditors. Where, however, a creditor petitions to have his debtor declared insolvent, the commissioner does not issue a warrant until satisfied by proof that the facts set forth in the petition are true, and ordinarily, not until notice has been given to the debtor to appear and show cause, if any he has, why he should not be declared insolvent.

The first step taken by the commissioner, in a case properly before him, is to issue a warrant directing a messenger to take possession of all the debtor's property, and to call a meeting of his creditors.

At the first meeting of the creditors, an assignee is appointed, to whom the commissioner assigns all the debtor's property, and who thereupon becomes clothed with all the powers requisite to sell, dispose of, collect, and reduce to money, all the property of the debtor, and whose duty it is to call meetings of the creditors, whenever ordered so to do by the commissioner, to collect and dispose of the property in a discreet and prudent manner, and to do such other acts as by law are imposed upon him.

The right of the debtor to a discharge from his debts varies in different States. In some, an honest debtor may be entitled to a discharge, although the per centage paid upon his estate be never so small; in others, the debtor must pay a certain per centage of his debts, or he will not be able to obtain his discharge; in others, he must pay a certain per centage, or obtain the assent of a majority of his creditors to his discharge. The law also varies in cases where a party is a *second* or *third* time insolvent, rendering it more difficult in such cases for the debtor to obtain his discharge than in the first instance of insolvency.

Where a debtor has been guilty of any fraudulent conduct in regard to his property, within six months or a year of the time when application to the commissioner is made, he will not be entitled to his discharge; and in some States, if he has paid or secured a pre-existing debt within a year prior to his being declared insolvent, having reasonable cause, at the time, to suppose himself insolvent, his discharge will not be granted.

The insolvent laws of any State can only be made to apply to all contracts made within the State between citizens of the State; they cannot be made to apply to contracts made within the State, between a citizen of the State and a citizen of another State; nor to contracts not made within the State. But if a creditor out of the State voluntarily makes himself a party to the proceedings under the insolvent laws of a State, and accepts a dividend, he is bound by his own act, and is deemed to have waived his extra-territorial immunity.

*Oath administered to a creditor to prove a claim in Massachusetts.* \*

"I, A. B., do swear that C. D., of . . . , by (or against,) whom proceedings in insolvency have been instituted, at and before the date of such proceedings was, and still is, justly and truly indebted to me in the sum of . . . dollars, for which sum, or any part thereof, I have not, nor has any other person to my use, to my knowledge or belief, received any security or satisfaction whatever, beyond what has been disposed of agreeably to law, and that the said claim was not procured by me for the purpose of influencing the proceedings in this case. And I do further swear that I have not, directly or indirectly, made or entered into any bargain, arrangement or agreement, express or implied, to sell, transfer or dispose of my claim, or any part of my claim, against said debtor, nor have directly or indirectly, received or taken, or made or entered into any bargain, arrangement or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever, to myself, or to any person or persons to my use or benefit, under or with any understanding or agreement, express or implied, whereby my vote for assignees, or my assent to the debtor's discharge is, or shall be, in any way affected, influenced or controlled, or whereby the proceedings in this case are, or shall be affected, influenced or controlled."

In Massachusetts the above oath may be administered by any justice of the peace, where the creditor resides, if more than five miles from the place of meeting of the creditors, which may be enclosed in an envelope, and sent to the Assignee.



### ACKNOWLEDGMENT OF DEBT.

*Debtor may bind himself by acknowledgment.*—Any person who is by law capable of binding himself by a common bond, may enter into a recognizance for the payment of any debt that he may owe, and may thereby subject his person, and his goods and estate, to be taken in execution for such debt.

#### *Form of the Acknowledgment*

Be it remembered, that on this — day of — A. B. of — personally appeared before —, and acknowledged himself to be indebted to C. D. of — in the sum of — to be paid to the said C. D., on the — day of —, [or, in — years — or in — months, from this day,] with interest from this day; and if not then paid, to be levied upon his goods and chattels, [lands and tenements,] and for want thereof, upon his body. In witness whereof the said A. B. hath hereto set his hand and seal.

#### *In presence of*

A. B. (L. s.)

*Provision as to Interest.*—The clause, as to the payment of interest, may be altered or wholly omitted, according to the agreement of the parties, but interest is usually allowed for the delay, if any, after the time of payment, unless the acknowledgment contains an express agreement to the contrary.

*Effects and remedies.*—In its effects and in the remedies for any wrongful proceeding under it, an acknowledgment is like an ordinary judgment of court.

If the debtor do not appear in person, and acknowledge the debt, he may empower his creditor to confess judgment, as follows:—

"I, A. B., have this day purchased of C. D. goods amounting to the sum of \$500.00, for which goods I agree to pay him in three months from date. And in case of default of my payment of the same with punctuality, I hereby empower C. D., [or any attorney at law appointed by him,] to appear before any Court of Record [or before any justice of the peace] in the county of —, and state of —, and to confess judgment on said debt, in the payment of which I may be delinquent.

"Witness my hand and seal, this 1st day of May, A. D. 1858.

"Witness,"

"A. B. (L. s.)

#### *Note with Power.*

\$—

B—, Jan. 1, 1851.

Six months after date I promise to pay to the order of C. D. — dollars, for value received, with interest. And I do hereby constitute and appoint C. D., [or any Attorney at Law appointed by said C. D.,] in my name and behalf, to appear in any Court of —, [or before any Justice of the Peace,] in the State of —, at any time after this obligation becomes due, and to confess judgment in favor of the holder of this obligation, for the above sum, interest and costs, with release of errors, waiving the right of appeal.

Witness my hand and seal, this — day of —, one thousand eight hundred and —.

A. B. (L. s.)

#### *Sealed and delivered in presence of*

[For more, on the same subject, See Business Man's Assistant, page 58.]

### ARBITRATION BY REFERENCE.

Persons who might maintain or defend a suit at law or in chancery, for a matter not affecting real estate, may submit their controversies to arbitration by a reference made by themselves, or their attorneys, before a justice of the peace, or other constituted authority.

#### *Form of Submission, and Certificate.*

Know all men, that A. B., of —, and C. D., of —, have agreed to submit the demand, a statement whereof is hereto annexed, [and all other demands between them, as the case may be,] to the determination of E. F., G. H., and I. J., the award on whom, or the greater part of whom, being made and

reported within — from this day to the court of —  
 — for the county of —, the judgment thereon shall be  
 final; and if either of the parties shall neglect to appear before  
 the arbitrators, after due notice given them of the time and  
 place appointed for hearing the parties, the arbitrators may pro-  
 ceed in his absence. Dated this —, day of —, in the year

A. B. (L. s.)  
 C. D. (L. s.)

This reference may be of "all demands," or of any specific claims or controversies, described so as to show what is the subject of the reference, or it may be varied in any other manner, according to the agreement of the parties.

*Neither party may revoke the submission* without the consent of the other; and if either party neglect to appear, after due notice, the arbitrators may proceed to hear and determine the cause, upon the evidence produced by the other party.

*All the arbitrators shall meet and hear the parties*, but an award of a majority shall be valid, unless otherwise required in the submission.

*The time limited for making and reporting the award* may be determined by the parties, but an award made and reported after the time limited in the submission, will not be binding unless recommitted by the court, to which it may be returned and again reported.

*The award* shall be enclosed and sealed, by the arbitrators, and transmitted by one of them to the court\* designated in the agreement.

*Costs of services of arbitrators*—Arbitrators, if the submission does not otherwise provide, may award costs at their discretion, including compensation for their own services, but the court may reduce the award of compensation for services of the arbitrators, if unreasonable.

*Judgment of the court.*—If the proceedings are regular, and there be no fraud in the arbitration, the award will generally be confirmed, and execution will issue for the amount, but for any legal and sufficient reason the court may reject the award, or recommit it to the same arbitrators for a rehearing.

\* The parties may consent to open the award, and abide by its decision, without presenting it to the court, by signing the following agreement:—

—, ss. B—, Nov. 3, 185-. We the subscribers individually agree to open the within Award, and to abide by the decision of it, the same as if opened in Court.

C. D., Pres't of — Ins. Com.  
 A. B., Party Insured.

[See "Business Man's Assistant" for forms of Bond of Submission, and Award of Referees.]

## REPLEVIN.

WHEN any goods, of the value of more than [twenty] dollars, are unlawfully taken or detained, from the owner or other person entitled to the possession, or when any goods of that value, attached on mesne process or taken in execution, are claimed by any person other than the defendant in the suit, they may be replevied by the person claiming them. So, the mortgagor of personal property, or any person claiming under him, who is entitled to redeem it, may replevy the property, if the mortgagee, upon being tendered the sum due on the mortgage, with all reasonable and lawful charges, expenses, &c., shall refuse to deliver up the same.

The officer, before serving the writ of replevin, must take from the plaintiff, or from some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of goods to be replevied, with condition to prosecute the replevin to final judgment, and to pay such damages and costs as the defendant shall recover against him, and also to return the said property, in case such shall be the final judgment.

If it shall appear, upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor accordingly, with damages for the taking thereof by the replevin, and his costs of suit.

## OFF-SET, OR SET-OFF.

WHEN there are mutual debts or demands between the plaintiff and defendant in any action, one demand may be set off against the other in certain cases, as follows :

The demand in set-off must be founded upon a judgment or contract, express or implied, and for a sum liquidated, or that may be ascertained by calculation. A claim for wrongs and injuries done cannot, therefore, be made the subject of set-off.

The demand in set-off must have existed at the commencement of the suit, and be due the defendant *in his own right*. Thus, an administrator, who has in his hands a distributive share of his intestate's estate, which belongs to an insolvent debtor, cannot withhold it from the debtor's assignee for the purpose of paying himself, by way of set-off, a debt due to him in his own right, from such debtor. (6 Metc. 537.) If, however, the demand was assigned to the defendant, with notice to the plaintiff of the assignment, before the commencement of the action, it may be filed in set-off by the defendant.

The set-off is allowed in all actions founded upon demands, which could themselves be the subject of a set-off.

If the demand, on which the action is brought, has been assigned, and the defendant had notice of the assignment, he cannot set-off any demand that he may acquire against the original creditor, after such notice.

If there are several plaintiffs to the suit, no demand can be filed in set-off, unless it be due from all of them jointly. So, if there are several defendants, the demand to be filed by them in set-off, must be due to all of them jointly.

The maker of a note payable on demand may, in an action on the note, by an indorsee against him, file in set-off any demands which he may have against the payee, and which he could have filed if the payee had brought the action. (9 Metc. 367.)

In an action by the indorsee against the maker of a negotiable note indorsed when *over due*, the maker can avail himself of any payments or offsets, or other matter of defence, which existed between himself and the promisee, at the time of the actual indorsement and transfer of the note to the holder. But he cannot file in off-set any claim against the promisee, that he may acquire after the note overdue is indorsed, although he had no notice of such indorsement.

In an action by an insurance company against an individual, the defendant cannot file in set-off a claim for damages upon a policy of insurance, for an alleged loss, when the claim is denied by the insurers, and the legality of such claim is undecided, and the amount of damages wholly unliquidated.

To entitle a defendant to a set-off, he must file a statement of his demands in court or in the clerk's office, at the time at which the action is entered, or within such further time as the court shall, for special reasons allow, and must give written notice to the plaintiff or his attorney.

Where a person has a claim against a party suing him, which he cannot avail himself of by way of set-off, he should immediately commence suit on the claim, and with the permission of the court, off-set one judgment against the other.

Executions between the same parties may be set-off, one against the other, in the following manner :—The debtor can deliver his execution to the same officer who holds the other execution, and he shall set-off one against the other, and the balance due on the larger execution may be collected in the same manner as if there had been no set-off. Such set-off cannot be made, unless the creditor in one of the executions is in the same capacity and trust as the debtor in the other; nor can it be made where one execution has been lawfully assigned before the creditor in the other execution becomes entitled to the sum due therein; nor where there are several creditors or debtors in one and not in the other; nor shall it be allowed as to so much of the first execution, as may be due to the attorney in that suit for his fees and disbursements.

## TENDER.

GOLD and silver are the only legal tender in this country; bank notes, are considered a good tender, *unless objection is made on that account.*

## PROTEST OF A BILL OF EXCHANGE, OR PROMISSORY NOTE.

This form may be used for Non-acceptance or Non-payment of a Bill of Exchange, or Promissory Note, with a slight alteration.—Also, see Note.

On this *first* day of *July*, in the year one thousand eight hundred and *fifty-six*, I, R. B. Notary Public, duly admitted and sworn, residing in B—, in the county of—, in the State of—, at the request of *C. D. Esq., Cashier of T— Bank,* [or of "*C. D.,*" or of "*the holder,*" or "*the bearer,*" as the case may be]—did exhibit the original Bill of Exchange, [Promissory Note] of which the foregoing is a true copy, \* unto E. F. [or as the case may be, unto a clerk in the counting-house of E. F.] the person upon whom the said bill is drawn, [and by whom the same is accepted, *if the bill have been accepted*] [*the promissor*], and demanded payment thereof, which was refused.

[*I then notified the Indorser of the non-payment, and that payment was required of him, by a written notice left at his place of business No. 1 S— Street.*]

Wherefore, I, the said Notary, at the request aforesaid, have protested, and by these presents, do protest against the Drawer of the said Bill [Note] the [Indorser] and all others concerned therein, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said Bill [Note].

Thus done, and protested in B— aforesaid, and my Notarial seal affixed, the day and year first before written.  
(Seal.) R. B. Notary Public.

CHARGES. DOLLS. CENTS.

Noting,  
Protest,  
Record,  
Notice,

\* NOTE.—*If a Bill or Note is protested for non-payment, the fact may be stated as follows:—*"at the Counting-house of E. F. the person upon whom the said bill is drawn. and who has accepted the same, and demanded payment thereof, which was refused."

*When the house or place is shut up, state as follows:—*"did take (or exhibit) the original bill of exchange, whereof a true copy is on the other side written, unto (or at the counting-house of E. F. where the said bill is made payable by the acceptance,) in order to present the same and demand payment thereof, and the door was found fastened, and the place shut up, and there was no person there to give an answer, (and I am informed that the said E. F. has been declared bankrupt, or has suspended payment, as the case may be.)"

*When the original bill has been lost before maturity, state:—*"did exhibit the second of exchange, (whereof a copy is on the other side written) unto E. F. the person upon whom the same was drawn, and by whom the first of exchange of the same set has been accepted and which has been lost or mislaid as I am informed, and the same being this day due, I demanded payment thereof, and the said E. F. answered that he would not pay the same."

*On non-acceptance of a bill when drawee has left no orders with his clerks, state:—*“unto a clerk in the counting-house of E. F. the person upon whom the same is drawn, and demanded acceptance thereof, and he answered that the said E. F. was not within, and there was no one authorized to accept said bill.”

*On non-acceptance of a bill when drawee's place of business is shut up:—*“did take (or exhibit) the original bill of exchange (whereof a true copy is on the other side written) unto (or at) the counting house of E. F. the person upon whom the said bill is drawn, in order to present the same, and to demand acceptance of it, and the door was found fastened, and there was no person there to give an answer.”

*On non-acceptance of a bill when the drawee cannot be found:—*“did make diligent search and inquiry for E. F. the person upon whom the said bill purports to be drawn, in order to have demanded acceptance thereof, but was unable to discover him, or to learn any tidings of him or his residence”

*On non-acceptance of bill, when left for consideration and acceptance, and is lost, or cannot be returned to the holder:—*“did apply for the original bill of exchange, whereof on the other side a copy or the principal contents is or are written, unto a clerk in the counting-house of Mr. D. K. the person upon whom the same was drawn, and demanded acceptance of the said original bill, and I also demanded the delivery of the said original bill, but he did not deliver up the same, and stated that Mr. K. had left the counting-house and had (as he believed inadvertently) taken the said bill away with him, and that the same was not accepted.”—This form may be easily adapted to the case of *non-payment* of the bill under any of those circumstances.

*Protest of a Bill for better security. —*“did exhibit the original bill of exchange (whereof a true copy is on the other side written,) at the counting-house of E. F. the person upon whom the said bill is drawn, and whose acceptance appears thereon, and did present the same unto a clerk there, and demand security for the payment thereof when the same should become payable in consequence of the said E. F. having become bankrupt, [or insolvent or suspended payment,] and I received for answer that security for the same could not be given by the said E. F. who has been declared bankrupt, [or has suspended payment, as the case may be.] Wherefore, I, the said notary, at the &c.

*Protest of a bill on non-payment, when the original has been lost before maturity, and a copy or the second of exchange of the same set, is presented for payment. —*“did exhibit a copy of the original bill of exchange, [or did exhibit the second of exchange,] (whereof a copy is on the other side written,) unto E. F. the person upon whom the same is drawn, and by whom the said original bill [or the first of exchange of the same set] has been accepted and which has been lost or mislaid, as I am informed, and the same being this day due, I demanded payment thereof, and the said E. F. answered that he would not pay the same. Wherefore, I, the said Notary, at the request aforesaid, have &c.

*Protest of a bill, by a resident person in a place where there is no notary. —*On the — day of —, one thousand eight hundred and —, I, A. B., a substantial person, residing in B —, in the county of —, in the state of —, at the request of the holder of a certain bill of exchange, whereof a true copy is on the other side written, did exhibit the said original bill of exchange unto Mr. F. of B. aforesaid, the person upon whom the same is drawn, and demanded acceptance thereof, who answered that [here state his answer and refusal] and I, the said A. B. do hereby certify that there is no public notary practising in or near B — aforesaid. Wherefore, I, the said A. B. at the request aforesaid, and in the absence of and in default of a public notary at this place, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of acceptance thereof, in the presence of C. D. and E. F. both credible persons residing at B. aforesaid.”

Which I attest,

A. B.

a housekeeper and a merchant, or a manufacturer, or an attorney-at-law, or banker, or hotel keeper, &c. &c., residing at B. aforesaid.

## LIEN, OR RETENTION

### COMMON LAW.

LIENS generally arise either from express contract, or the usages of trade, or the manner of dealing between the parties. 15 Mass. 389, 394.

A right of lien gives no general right to *sell goods* unless where there is an express stipulation to that effect, or the statutes give the right, or the goods are perishable, or subject to expense of keeping.

There appears to be no lien on a passenger, or the clothes he wears, though there may be on his luggage.

But the general opinion appears to be, that the right of lien is not confined to those trades which are under an obligation to accept employment from all who offer it; but that the remedy by detention extends to every trade exercised for the benefit and advantage of the community.

Attorneys and solicitors have a lien for their costs on the papers of their clients; bankers, upon all securities in the way of trade; brokers, factors, and agents, on the property of their principals in possession; carriers have a lien for the carriage price; innkeepers on the goods and property of their guests, for their food and lodging, and on their horses, for their keeping and stabling; insurance brokers have a lien for the general balance of their account on the policies effected by them for their principals; lastly, millers, packers, wharfingers, dyers, coachmakers, calico printers, shipwrights, auctioneers, tailors, and others, have all a lien on the goods respectively confided to them in the way of business.

But as the right of lien is admitted for the benefit of trade, it is confined in its operations to trade only. It has been held that no lien lies for the pasture of cattle, or the keep of a dog; or where there has been a special agreement to pay a certain sum for workmanship, in which case the owner of the goods on which the labor has been bestowed can only be made *personally* liable.

In case of the lien of cattle, it is admitted that they may be worked as the owner would have worked them; so also a cow must be milked.

Under the following circumstances the right of lien cannot be exercised:

1. If the possession of property has been obtained wrongfully or by misrepresentation.
2. If it has been entrusted solely on the *personal* credit of the owner of the lien, or delivered by an authorized servant or agent.
3. If by the bargain, a future day of payment was agreed upon, the detention of the chattel would be inconsistent with the terms of the contract.
4. And lastly, no lien can be acquired over property delivered by a bankrupt, or one in contemplation of insolvency.

It is also material to remark, that if the holder of goods accept a specific security in lieu, or voluntarily part with the possession of the whole, or part of them, he afterwards loses all right of lien upon them.

By the general maritime law, material men have a three-fold remedy for supplies and materials furnished to a foreign ship: 1st, against the vessel; 2ndly, against the owners; 3dly, against the master. The lien of material men must be enforced within a reasonable time after the debt is due, or it will not avail against a purchaser. 2 Story's R. 456.

The mechanic has a lien upon articles repaired by him for his labor and materials, and may retain possession until he is paid. 2 N. Y. 628.

Factors have a lien on the goods of their principals in their possession, for their general balance as well as for their particular advance. 21 Pick. 318.

But not in respect to debts which arose prior to the time at which his character of factor commenced. 15 Pick. 36, 40.

The master of a vessel may retain the cargo until the freight be paid or tendered; yet he must be ready to deliver the cargo on payment or tender. 4 Mass. 91, 92.

Where a party has undertaken to perform labor in transporting goods, and has performed but part of the service, he cannot hold the goods on the ground of lien for what he has done. 9 N. H. 42.

A mere creditor, happening to have in his possession specific articles belonging to his debtor, has no lien upon them. 15 Mass. 490.

Where goods are delivered to be manufactured, the manufacturer has a lien on them for his labor and expense bestowed on them. 14 Pick. 332.

A vendor of goods has a lien on them so long as they remain in his pos-

session, and the vendee neglects to pay the price according to the conditions of sale. 2 Pick. 206.

The carrier has a right to his freight in advance, and has a lien on the goods in possession, and may have his action against both consignor and consignee. His lien continues only while the goods are in the possession of the carrier. 17 Johns. 134.

A finder of lost property, for the restoration of which the owner has offered a reward, has a lien on the property, and may retain possession of it, if, on his offer to restore it, the owner refuses to pay the reward. 3 Met. 352.

The lien of the vendor of goods for the price depends upon the possession, and is extinguished by a delivery of them; and, in general, it is immaterial whether the delivery is actual or constructive. 2 Pick. 206, 212.

A livery stable keeper has no lien for the keep of a horse delivered to him in the way of his trade. 1 C. & M. 743.

It would seem that a workman, employed to weigh or measure a chattel has a lien thereon for his charge. 4 Taunt. 308.

Every bailee for hire who by his labor or skill imparts additional value to the goods, has a lien thereon for his charges, there being no special contract inconsistent with such lien. 4 Comstock's N. Y. Rep. 551.

The lien extends to all the goods delivered under one contract, and is not confined to the particular portion on which the labor has been bestowed. Accordingly, where a quantity of logs were delivered on different days at the defendant's saw-mill, upon an agreement to saw the whole quantity into boards, and the defendant sawed a part of them, and delivered the boards to the bailor, without being paid for the service, *held*, that he had a lien for the amount of his account upon the residue of the logs in his possession. *Id.*

Nearly all the States have enacted Lien Laws,—[*which see*]

Three things are usually required to be done by the person furnishing materials, or performing labor, in order to secure his lien.

*First.* That notice should be given by the person furnishing the materials to the owner, that he intends to claim such lien.

*Second.* That the contract, specification, certificate or claim, should be filed or recorded within a certain time, generally to the following effect:—

*Certificate for Work or Labor.—To be Recorded.*

I, A. B. of —, do hereby claim to have a lien upon the estate situated [*here describe the premises*]; to secure the payment of — dollars — cents, being the amount of wages due me in my own right, after deducting all just credits, for work done and performed in building [*altering or repairing, or furnishing materials, as the case may be*] said premises, according to the following bill:—

(*Here insert the Bill.*)

C. D. of —, is the owner of said premises, and E. F. of —, the contractor under which the work was done and performed. A. B.

STATE OF —.

—, ss.

B—, MAY 24, 1859.

Personally appeared the abovenamed A. B., and made solemn oath (or solemnly affirmed) that the foregoing Certificate, by him subscribed, is true.

Before me,

G. H.

*Just. of the Peace for said County.*

*Third.* That action, or suit by attachment, on the lien should be commenced within a specified time.

Generally, mortgage is preferred, if existing before the date of contract.

NOTE.—[A petition to enforce a mechanic's lien, must contain a brief statement of the contract, upon which it is founded; *that is*, it must show what the contract was. The petition must aver that the person with whom the contract was made, was either the owner of the premises, or was a person who had contracted with such owner for erecting, altering, or repairing the building. Merely alleging him to be the contractor and supposed owner thereof is insufficient.—11 Cush. Rep., 308.]

*Lien on Buildings, Boats, Vessels, &c.*

## LIEN LAW OF ALABAMA.

Mechanics and builders have a prior lien upon the tract, parcel, or lot of land, on which buildings are erected by them, and on the building, for the price agreed on, or compensation to be paid, and materials used in the construction, unless surety be given for the performance of the contract, or an agreement be made in writing, waiving the lien.

The contract must be in writing, describing the land, and the price, and be signed by the parties, or their agents, and registered in the probate office in the county in which the lands lie, within sixty days after date.

Lien is subject to existing liens, deed of trust, or other legal incumbrances.

Lien discharged, on security given by owner of land for the payment of the price or compensation agreed to.

A change or modification of the contract does not affect the lien.

Lien may be enforced in equity or sold by execution after judgment.

Lien barred if not enforced in equity, or an action of law upon the contract, within ninety days after completion of work or supply of materials.

## LIEN LAW OF ARKANSAS.

All artisans, builders, and mechanics of every description, who shall perform work or labor on any building for the owner or proprietor, whether under written or verbal contract, and the sum in controversy exceeds one hundred dollars, shall have an absolute lien on such building, and the land under and around the same, not exceeding two acres, for such work and labor, or for materials furnished.

A just and true account of the work done, and materials furnished must be filed with the clerk of the circuit court of the county, within three months after such lien shall have accrued, and shall be verified by oath, and contain a description of the property.

The lien shall not affect prior incumbrances against the property, whether created by judgment, deed, mortgage or any other instrument, if such incumbrance shall have been created and duly recorded previous to the time of commencing the work or furnishing materials, or the party had actual notice of such incumbrance at the time.

Suit must be brought on such lien within one year after the completion of the building.

Liens to be satisfied pro-rata. Prior liens first to be paid.

## LIEN LAW OF CALIFORNIA.

\* All artisans, builders, mechanics, lumber merchants, and all other persons performing labor or furnishing materials for the construction or repairing of any building, wharf, bridge, ditch, flume, or aqueduct, to create hydraulic power, or for mining purposes, or other superstructure, shall have a lien separately or jointly on the same. Every person wishing to avail himself of the benefits of this lien must file in the recorder's office of the county, within sixty days after the completion of the building, &c., a just and true account of the demand due him, after deducting credits, verified by oath, and also a correct description of the property to be charged with said lien.

If such lien is claimed by a sub-contractor, journeyman, or other person performing labor, or furnishing materials, the account must be filed within thirty days after work is done or materials furnished; and within five days after he shall serve a copy on the owner, or the agent of such owner, if the latter reside out of the county in which such building is situated. If such owner do not reside in the county, or have no agent therein, service may be made by posting a copy of the same in a conspicuous place on the building, wharf, &c.

On being served with notice, owner shall withhold from contractor, out of the first money due, or to become due, to him under the contract, a sufficient sum to cover the lien claimed.

The land upon which the building or superstructure stands with a convenient space around the same, shall be subject to the lien.



Suit must be brought within six months from the filing of claim, or if credit be given, six months after its expiration; but no lien can continue in force longer than two years by any agreement or credit.

Lien may be enforced by suit in any court of competent jurisdiction, on setting forth in the complaint, the particulars of such demand, with a description of the premises.

Any mechanic, or artisan, who shall make, alter, or repair any article of personal property, at the request of the owner, shall have a lien for his work, and may hold and retain possession of the same; and if his charges are not paid within two months, he may sell such property at public auction, after advertising the same for three weeks in some newspaper published in the county, and if there is no paper, then by posting notices of such sale in three of the most public places in the town where such work was done; and the proceeds of such sale shall be first applied to the discharge of such lien and the costs and expenses of keeping and selling such property, and the residue, if any, shall be paid over to the owner thereof.

Persons contracting in writing with the owner of a lot or lots, in any incorporated city or town, to grade or improve the same, or the street in front of or adjoining the same, and shall go on and complete the said grading, it shall be considered as an improvement of said lot or street, and the same provisions of this act shall apply thereto as would apply if it were a building.

Lien on vessels and boats navigating the waters of this state, extends to all debts contracted by master, owner, agent, or consignee, on account of supplies for, or work, services, or materials furnished, or for building, repairing, or fitting out of such boat or vessel; for sums due for wharfage or anchorage; demands for damages accruing from non-performance of contract; and for all injuries done to persons or property by such boat or vessel. Suit must be commenced within fifteen days.

#### LIEN LAW OF CONNECTICUT.

Lien is given to persons for work done, or materials furnished for erecting, constructing, or repairing any building, or for services rendered exceeding the sum of twenty-five dollars.

Lien is dissolved, unless, within sixty days after performing such services, or furnishing such materials, a certificate in writing, describing the premises and the amount claimed, and the date of the commencement of the claim, be lodged with the town clerk for record, the same being first subscribed and sworn to as the amount justly due, as near as the same can be ascertained.

No person shall be entitled to such lien, or to file said certificate, unless he shall within sixty days from the commencement of such labor, or furnishing materials, notify the owner of such building of his intention to claim a lien therefor.

Boarding-house keepers have a lien on the baggage, goods, and effects for all money due from any person boarding at such house, for sixty days; after which time the same, or enough thereof may be sold, and the proceeds applied to the payment of the debt.

#### LIEN LAW OF FLORIDA.

Every master-builder and mechanic, contracting to erect a building, or engaging to perform jobs of work on any such building, shall have a lien on the building. The contract must be reduced to writing, and signed by the parties; or the amount shall be liquidated between the parties, and a net balance struck. All such contracts shall be recorded in the clerk's office of the circuit court for the county, within thirty days after their execution.

Artisans, builders and mechanics, and those who furnish materials for building, under contract with the proprietor, and all sub-contractors, shall have a lien for such material, and for work and labor done on houses and other edifices by them erected, in whole or in part; each artisan, builder, mechanic, laborer, and sub-contractor for his own work and materials furnished.

Every person, except a sub-contractor, must file with the clerk of the county within six months after materials furnished or work and labor per-

formed, a just and true account of the demand due him, after deducting all credits, verified by his oath, with a description of the property.

Sub-contractor wishing to avail himself of this act, must give notice in writing to the owner of his intention to furnish materials or perform labor on the building, and the probable value; and if the work is afterward done, or materials furnished, the sub-contractor shall settle with the contractor therefor, in writing, and such settlement signed by the contractor, and certified by him to be just and true, shall be left with the owner, or proprietor, or agent, and within ten days from the time the materials are furnished or the labor performed, the sub-contractor shall file a copy of the settlement with the clerk of the circuit court of the county, and a correct description of the property.

The certificate shall be a justification to the employer's withdrawing from the contractor the amount appearing to be due to the sub-contractor.

The extent of such lien shall be the land upon which such building is erected, and a space not exceeding five hundred square feet clear of the building.

Every mechanic or workman shall have a lien on personal chattels for all work or repairs done on the same. If the same is not paid for and taken away within three months, the mechanic or workman shall give possession of the same to the sheriff of the county, who shall advertise and sell such article, and pay the mechanic his bill, and the residue, if any there be, shall be paid over to the owner of such article.

Ship chandlers, storekeepers and all dealers, mechanics and workmen, shall have a lien on any steamboat, ship or vessel, for all stores, &c., which lien shall have a preference over all others. The right of lien is to cease unless enforced within thirty days after the same accrued.

#### LIEN LAW OF GEORGIA.

All persons have an exclusive lien on steamboats and other water craft of higher claims than all other incumbrances, of whatever nature or sort the same may be, for wages, wood and provisions furnished; *provided* that they demand and prosecute the collection of the same within twelve months. On refusal to pay, application must be made to any judge, or justice of the superior court or justice of the inferior court in any county in which said steamboat or water craft may then lie. When the same shall be for thirty dollars or under, application may be made to the justice of the peace of the district where such steamboat, &c., shall lie.

The above law also applies to all steam saw-mills, in behalf of all persons who may be employed by the owners, agents or superintendents, for services rendered, or for timber, firewood, provisions or supplies. All millwrights and builders of gold machines are entitled to the same lien.

When any negro, being a slave or free person of color, shall be employed as pilot, engineer, first or second mate, deck hand, or in any other capacity, the owner, master, agent, or attorney at law of said negro or free person of color shall have the like remedies.

All machinists who may furnish any kind of machinery or who may repair the same which may be put up or used in any mill, building, steamboat, or vessel, shall be entitled to the same lien.

Every mason and carpenter shall have a lien for work done or materials furnished for building or repairing any house, if no security shall have been taken therefor. Claim to be recorded within three months from the time the same is completed, in the clerk's office of the county where such building is situated. Suit must be commenced within twelve months from the time the debt is due.

#### LIEN LAW OF ILLINOIS.

Persons furnishing labor or materials in erecting or repairing any building or appurtenances by virtue of any agreement with the owner thereof, shall have a lien on such building and the lot or tract of land upon which the same is situated.

The time for the completion of the contract must not exceed three years, and suit must be brought within six months from the time that payment should have been made. Creditor may, upon bill or petition to the circuit court of the county in which the land or lot lies, obtain an order for the

sale thereof, and for applying the proceeds of such sale to the discharge of his demand.

Boats or vessels are subject to a lien for all debts contracted for supplies, work, or materials, furnished toward the building, repairing or equipping the same. Lien must be enforced within nine months from time of indebtedness.

### LIEN LAW OF INDIANA.

Mechanics and all persons performing labor or furnishing materials for the construction or repair of any building, or who may have furnished any engine or other machinery for a mill, distillery, &c., under contract with the owner, shall have a lien on the same for such services and materials, and the interest of the owner in the lot of land on which such building stands. Sub-contractors and laborers, giving notice in writing to the owner, may make him liable for their claim, if he be indebted to their employer in that amount, if not then to the amount due from the owner to their employer.

Notice of the intention to hold a lien on the property, must be filed in the recorder's office of the county within sixty days after the completion of the building or repairs, specifically setting forth the amount claimed.

Lien may be enforced by filing the complaint in the circuit court or court of common pleas within a year from the completion of the work, or the furnishing of the materials, or expiration of the credit.

Whenever any person shall entrust to any mechanic, or tradesman, materials to construct, alter, or repair any article of value, such mechanic or tradesman, if the article be completed and not taken away, and his charges paid, may, after six months from the time his charges became due, sell the article at auction, after advertising it for ten days in three public places in the place where he resides one of which must be in his shop; if the value of the article be more than ten dollars, then three weeks in some newspaper in the county; and if there be a surplus over and above all charges, the same, if the owner be absent, must be deposited with the treasurer of the county, subject to the order of the person legally entitled thereto.

Forwarding and commission merchants having a lien upon goods which have remained in store for one year or more, may proceed to advertise and sell at public auction, so much thereof as may be necessary to pay the amount of the lien and expenses.

Boats and vessels of every description found in the waters of the State, are liable for all debts contracted by the master, owner, or consignee, on account of work done, and supplies or materials furnished toward their building, repairing, fitting, &c.; and for any negligence or wilful act of the master, owner, or agent, on any contract entered into by either of them for the transportation of persons or property.

*Innkeeper.* — An innkeeper has a lien upon all articles entrusted to him for expenses thereof, and upon his guest's goods in his care for his charges against him.

If the property entrusted to him be live stock, or is of a perishable nature and will be greatly injured by delay, the innkeeper may, after the expiration of thirty days from the time his charges are due, proceed to sell such property, after giving ten days' notice thereof. — R. S., vol. II., p. 240-1. When the property is not of a perishable nature, it cannot be sold until six months after the charges have accrued. *Ib.*

Where several horses are kept, the lien is only on each horse for its keeping. Nor can the horse be detained for the keeping of the owner. — 1 Bulst. 207, 217. And if the horse is once delivered to the owner the lien is released. *Ib.*

### LIEN LAW OF IOWA.

Every persons who by virtue of a contract with the owner of a piece of land, performs work, or furnishes materials for any building, mill, or machinery and appurtenances, shall have a lien upon the land and building, against all persons. Incumbrances, by judgment rendered, and by instruments recorded before the commencement of the work excepted.

Action must be commenced within one year from the time of payment, or within six months after the decision of any suit brought within that time.

Lien includes half an acre if a town lot, and two acres if not.

A sub-contractor must commence an action against his principal within six months from the time of payment.

Boats and other vessels, found in the State, are liable for debts contracted by the master, owner, agent, clerk, or consignee, for supplies, work, materials, fitting, and all other demands. Such liens upon the boat and furniture take precedence of all other claims, and are to be preferred in the following order: 1st, wages of boatmen, for wages for services performed within the year, if suit be commenced within twenty days, 2d, debts due the State; and 3rd, all other causes.

Actions must be brought within one year.

### LIEN LAW OF KENTUCKY.

Except the captain, all the officers and hands, and owners of hands employed on board a steamboat or any other vessel, shall have a lien on such boat or vessel for wages, whether earned in or out of the state.

Mechanics, tradesmen, and others shall also have a like lien for materials, stores, repairs, &c., furnished on or towards the building, repairing, fitting, or equipping such boat or vessel in this state, with a preference over any other debt of the owner, except to the officers and hands.

A steamboat, or any other vessel shall also be liable to indemnify the owner of any slave, for any damage he may sustain by reason of his conveying or attempting to convey a slave thereon out of the state, or from one part of the state to another, without the consent, in writing, of the owner. The captain and owner of the boat shall also be personally liable to the owner for such slave.

Lien may be enforced by attachment out of chancery, in any county where the boat or vessel may be at the time of the issuing of the process.

Mechanics have a lien for their labor and for furnishing materials in constructing, altering or repairing any building, upon the building and lot of land on which it stands, in the towns of Bowling-Green, Brandenburg, Russellville, Covington, Frankfort, Owenborough, Lexington, Louisville, Maysville, Newport, Smithland, and the counties of Colloway, Jefferson, and Marshall. The particulars and amount of claim must be filed in the county clerk's office within six months from the time the labor is completed, or materials furnished.

In Paducah, lien must be enforced within one year, by filing bill, &c.

### LIEN LAW OF LOUISIANA.

Every mechanic, workman or other person, performing any work or furnishing materials towards the erection, construction, or finishing any building, erected under a contract between the owner and builder, whether such work be performed by journeyman, laborer, cartman, sub-contractor or otherwise, may deliver to the owner an attested account of the amount and value of the work performed, and remaining unpaid, and thereupon such owner shall retain, out of his subsequent payments to the contractor, the amount of such work for the benefit of the person so performing it.

When any such account of work shall be placed in the hands of the owner, it shall be his duty to furnish his contractor with a copy; if contractor shall not, within ten days after the receipt of such paper, give the owner written notice that he intends to dispute the claim, or if, after giving such notice, he shall neglect or refuse to have the matter adjusted, he shall be considered as assenting to the demand, and the owner shall pay the same when it becomes due.

If the contractor dispute the claim of his journeyman, or any other person, and the claim cannot be adjusted amicably, it shall be submitted to the arbitration of three disinterested persons, and the decision of two of them, in writing, shall be considered conclusive.

If the contractor shall not within ten days after dispute is so adjusted, pay the sum due to his creditor, with the costs, the owner shall pay the same out of the funds.

If, by collusion or otherwise the owner shall pay to his contractor any money in advance of the sum due on said contract, and if the amount still due the contractor shall be insufficient to satisfy the demand made for work, &c., the owner shall be liable to the amount that would have been due at the time of receiving the account of such work, in the same manner as if no payment had been made.

## LIEN LAW OF MASSACHUSETTS.

Any person to whom a debt is due for labor performed or furnished, or for materials furnished in the erection, alteration, or repair of any building, by virtue of an agreement with, or consent of, the owner thereof, or any person acting in his behalf, shall have a lien on such building, and upon the interest of the owner thereof in the lot of land upon which the same is situated. No lien for materials shall attach unless the person furnishing the same, shall, before so doing, give notice to the owner of the land, if such owner be not the purchaser of the materials, that he intends to claim such lien.

Such lien is dissolved, unless the person within thirty days after he shall cease to labor or furnish materials for such building, file in the office of the clerk in the city or town, a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property, with the name or names of the owners of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien, and shall be recorded. Such lien may be prevented from attaching, by the owner giving notice in writing, to the person about performing the labor, or furnishing such materials, that he will not be responsible therefor.

Such lien may be enforced by petition to the court of common pleas, or when the amount of claim does not exceed \$100, to any police or justice's court, or where there is no police or justice's court, by petition to any justice of the peace having jurisdiction in other civil cases between the same parties.

Lien is dissolved unless suit is commenced within 90 days after the person who may desire to avail himself thereof shall cease to labor or to furnish materials for such building or structure.

When such debt is fully paid, the creditor, at the expense of the debtor, shall enter a discharge of the same on the margin of the registry, or execute a deed of release.

*A Lien on Ships and Vessels* is allowed for labor performed, in launching, or materials used in construction or repairs, or for provisions, stores or other articles; and such lien must be filed in the clerk's office in the city or town within four days from the time such vessel shall depart from the port where the debt was contracted. The mode for enforcing the lien is similar to the above.

Any number of persons having liens may all join in the same petition.

*Boarding house Keeper's Lien.*—All boarding-house keepers have a lien upon the baggage and effects of their guests and boarders, except seamen and mariners, brought to their respective houses, until all the proper charges due to such keepers for the fare and board of all such guests and boarders shall be paid.

No seaman or mariner who has shipped for or entered into contract for any voyage, to be by him performed, from any port in this State, shall be liable to arrest on *mesne process* for or on account of any debt or obligation to any landlord or boarding-house keeper by him incurred; nor shall any such landlord or boarding-house keeper detain, or have any lien upon the wearing apparel, or other property of such seaman or mariner, or hinder, or obstruct him in the performance of said contract, under a penalty of not more than two hundred dollars.

*Lien for Labor expended on Personal Property.*—A party having a lien (other than a lien on buildings and vessels) for work, labor, care, diligence, or money expended on or about personal property, by reason of any contract, express or implied, may, if the money is not paid within sixty days after demand in writing, delivered to the debtor, or left at his usual place of abode, petition a justice of the peace, or police, or justices' court, for an order for the sale of the property.

## LIEN LAW OF MAINE.

Every person performing labor or furnishing materials for erecting, or repairing any building or appurtenances, or who has furnished labor or materials by virtue of any contract with the owner thereof, or other person who had contracted with the owner, shall have a lien on the building and land, and upon the right of redeeming the same when under mortgage.

To secure the benefit of such lien, an attachment, or right of redemption, must be made within ninety days.

Any ship carpenter, caulker, blacksmith, joiner, or other person, who shall perform labor, or furnish materials for any vessel building or repairing, shall have a lien on such vessel for wages, or materials furnished, until four days after such vessel is launched or repaired, which lien must be secured by an attachment on said vessel within that period.

### LIEN LAW OF MARYLAND.

All canal boats, or vessels of any kind, used or intended to be used as carriers of coal, other freight, or passengers on the Chesapeake and Ohio canal, shall be subject to a lien for all debts which shall or may become due to mechanics, farmers, or other persons, from the owners, masters, captains, or other agents of the owners, for materials furnished, or work done in building, repairing, or equipping the same. *Provided*, that a statement setting forth the name of claimant and debtor, description of vessel, and the place where built, repaired, or equipped, with the items of the claim, verified by oath of claimant, shall be delivered to the clerk of the circuit court for the county within twenty days after debt accrued.

Lien to hold for one year. Lien not to have preference over mortgage or bill of sale.

Every building erected in the county of Baltimore, and in Harford county shall be subject to a lien for the payment of debts contracted for work done or materials furnished for or about the erection of such building, the land on which it stands, and the ground necessarily connected therewith.

Lien only preferred to liens subsequent to the commencement of such building, unless the person furnishing work or materials, within thirty days after making such contract, to furnish work or materials, give notice in writing to the owner or agent, that he intends to claim the benefit of the lien. Claim must be filed in the office of the clerk of the county court. Claim must set forth the names of parties, amount claimed, nature of the work, &c.

The debt shall be a lien for six months, although no claim shall have been filed therefor. Lien expires five years from the day of filing unless revived by *scire facias*.

On payment or satisfaction of claim and costs, the same must be entered by the claimant at the request of owner, in the office of the county clerk. If he neglect or refuse to enter the same within sixty days, he shall forfeit a sum not exceeding half the amount of the claim.

### LIEN LAW OF MICHIGAN.

Every person furnishing labor for erecting or repairing any building, or the appurtenances, by contract with the owner of the land, shall have a lien on the land, not exceeding one hundred and sixty acres, and the buildings thereon. The contract must be in writing, signed by the owner of the land; and recorded in the registry of deeds. The lien ceases unless a suit be commenced within six months from the time of the expiration of the last instalment.

Creditor may, on petition to the circuit or county court, within sixty days after debt is payable, obtain an order for the sale thereof.

Boats or vessels running upon the navigable waters of this state, are subject to a lien for all debts contracted by master, clerk, agent, or consignee for provisions, work, building, materials, repairing, equipping, anchorage, wharfage, or any other contract, injury to persons or property, negligence or misconduct of the master. Such liens may be enforced by warrant from any court of record.

### LIEN LAW OF MINNESOTA.

Every person performing any work or furnishing materials for and in erecting any dwelling-house or other building, shall have a lien on the same, together with the right, title and interest of the person owning such building, for the payment of the debt, and the land upon which the same is situate, not exceeding forty acres, or if within any city, town, or village plot, the lot upon which the same shall be situate, not exceeding one acre.

If such building shall have been constructed under contract with the owner, no person who may have done work for such contractor or furnished materials for him, shall possess a lien on said building, unless he

shall within thirty days after commencing work or having furnished materials, give notice in writing to the owner of the building or his agent, that he is so employed or has furnished such materials, and that he claims the benefit of the lien granted by this act.

Lien must be claimed by filing a petition or claim for the same, and an action for the recovery thereof be instituted within one year.

The claim or petition must contain a statement of the contract, of the amount due, and a description of the premises, and all the material facts in relation thereto, and may be filed in the county or circuit court.

Every person on receiving satisfaction for debt and costs, shall, at the request of any person interested in the building, and on tender of office fees for entering satisfaction, within six days after such request made, enter satisfaction for the claim, in the office where it is filed. If such person shall not by himself or attorney, enter satisfaction as aforesaid, he shall forfeit to the party aggrieved a sum not exceeding one half the debt.

In all cases of a lien created by this act, the person having a claim filed may proceed to recover it by a personal action against the debtor.

Any person performing manual labor upon any land, timber, or lumber, on account of the owner, agent or assignee, may avail himself of the provisions of this act.

All mechanic's liens which shall have been proved, shall lie as a debt on the land and building, and be the same as a mortgage on the same, with twenty-five per cent. per annum until sold or paid.

Any person who shall make, alter, or repair any article of personal property, at the request of the owner, or legal possessor of such property, shall have a lien on such property for his just and reasonable charges, and may hold and retain the same; and if they be not paid within three months after the work shall have been done, he may proceed to sell the same at public auction, by giving notice of such sale by advertisement for three weeks in some newspaper published in the county, or if there be no such paper in the county, then by posting up notices of such sale in three of the most public places in the county, three weeks before the time of sale; and the proceeds of such sale shall be applied first to the discharge of such lien, costs and expense of keeping, and selling such property, and the remainder, if any, shall be paid over to the owner.

A Common Carrier, and any person who shall at the request of the owner convey any personal property, or any person who shall safely store goods at the request of the owner, shall have the same lien and the same power of sale, for the satisfaction of his charges, upon the same conditions and restrictions as provided in the preceding sections. The provisions of this and the preceding section not to interfere with any agreement between the parties.

### LIEN LAW OF MISSOURI.

Every mechanic, builder, artisan, workman, laborer, or other person, who shall perform work or labor, furnish materials, machinery, or fixtures, in erecting or repairing any building, or improving land, under or by virtue of a contract with the owner, agent, trustee, contractor or sub-contractor, shall have a lien upon the same, and upon the land on which the same is situated to the extent of one acre.

Sub-contractor wishing to avail himself of the benefits of this act, must give notice to the owner, before or at the time he furnishes any of the things aforesaid, or performs any labor, of his intention to furnish or perform the same, and the probable value, and if afterwards, the things are furnished or labor done, the sub-contractor shall settle with the contractor, and having made the settlement in writing, the same, signed by the contractor, shall be presented to the owner, and left with him; and within thirty days from the time the things are furnished or labor performed, the sub-contractor shall file with the clerk of the circuit court of the county a copy of the settlement, with a description of the property.

If the contractor refuse to sign such settlement, the sub-contractor shall present a statement of work done or things furnished to the owner, and file a copy of the same, verified by affidavit, within thirty days, with the clerk of the circuit court.

The certificate of settlement shall be a justification to the employer in withholding from the contractor the amount appearing to be due.

It shall be the duty of every person, except sub-contractors, to file with the clerk of the circuit court, within ninety days after work done or materials furnished, a just account of his demand, after deducting all credits, and a correct description of the property, verified by affidavit.

Mechanic's liens shall be preferred to all other liens or incumbrances which may be attached to or upon such building, or improvement, or land on which the same is situated, made subsequent to the commencement of said building or other improvement.

Liens of mechanics shall attach to the buildings, erections, or improvements, for which they were furnished or the work was done, in preference to any lien, or incumbrance, or mortgage upon the land; and any person enforcing such lien, may have such building, erection, or improvement sold under execution, and the purchaser may remove the same.

Liens for any amount may be enforced in the circuit court.

All suits must be commenced within ninety days by sub-contractors, and nine months in other cases.

### LIEN LAW OF MISSISSIPPI.

Every person who shall contract with the owner, or lessee, of any tract of land, or town lot, to furnish labor or materials for erecting or repairing any house or other building, mill, machinery, bridge, or any description of mechanical work; and every other person who may have furnished materials which may have been used in the construction of the same, whether by special agreement or otherwise, shall respectively have a lien to secure the payment of the same, upon such buildings and materials aforesaid.

Action may be commenced in any court having competent jurisdiction, or the contract must be recorded in the office of the clerk of the probate court within twelve months from the time payment should have been made.

If suit be commenced in circuit court, it shall be by bill or petition, describing the property, and the nature of the contract, or indebtedness; which bill or petition shall be filed in the clerk's office of the circuit court of the proper county.

If judgment be given in favor of the applicant, a special execution shall issue to the sheriff, and under such execution he shall proceed to sell said property, or so much thereof as will satisfy judgment and costs.

When the sum due any person shall be of such an amount as to come within the jurisdiction of a justice of the peace, he shall have jurisdiction thereon, in accordance with the provisions of this act; *provided*, that said contract be filed in his office, and process thereon directed to any constable of the proper county, and shall have the same effect as process issued upon a judgment rendered in the circuit court under this act. Either party shall have the right to appeal.

### LIEN LAW OF NEW HAMPSHIRE.

Every person who shall furnish labor or materials for erecting or repairing, or altering a building, under any written contract, shall have a lien on such building and the lot of land on which it stands, for thirty days after payment shall become due. A copy of contract must be left with the town clerk of the town in which such building is situate. Attachment must be made within thirty days from the filing of said contract.

If the owner of the building fail to perform his part of the contract, thus preventing the other party from completing his part, the latter shall have a lien on the building for such sum as may be due him for what he has done.

Every person performing labor or furnishing materials toward building, repairing, fitting, or furnishing any vessel, shall have a lien on said vessel for four days, after she is completed. Attachment must be made within the four days.

### LIEN LAW OF NEW YORK.

Any person who, by virtue of any contract with the owner or his agent, or any person who in pursuance of any agreement with any such contractor, shall, in conformity with the terms of such contract, perform labor, or furnish materials for building, altering, or repairing any house, in the several cities of this state and in the villages of Syracuse, Williamsburgh, Geneva, Oswego, Auburn, and Canandaigua, town of Kingston and county of Richmond, shall have a lien upon the same, and upon the land on which the same stands.



Specifications of the work or materials with the prices, must be filed in the office of the clerk of the county, and a notice thereof served personally on the owner, &c., within twenty (Buffalo thirty) days after making the contract, commencing the work or furnishing the materials. Lien continues in force one year from the filing.

To enforce this lien the laborer, contractor, or person furnishing materials, must serve a notice on the other party, requiring him to appear in the court of common pleas of the county, or in the justices court of the city or village, at a time certain, not less than twenty days, and submit to a settlement. Within ten days after service of such notice, the owner is to be served with a bill of particulars of the amount claimed to be due, with a notice to produce a bill of particulars of any offset.

Within thirty days after labor has been performed or materials furnished, the person claiming payment therefor, must deliver to the owner a statement in writing, signed by himself and the contractor, specifying how much is due, or take the necessary proceedings against the contractor, to procure a settlement as above stated,—or lose his lien.

### LIEN LAW IN THE CITY OF NEW YORK.

Persons furnishing materials, or performing labor in building, altering, or repairing a house, &c., have a lien upon the same, and the lot of land upon which the same stands.

A contractor, laborer, or person furnishing materials, may enforce such lien, by serving a notice on the other party, to appear in court, in not less than twenty days and submit to settlement. Within fifteen days after such notice, a bill of particulars of the amount claimed must be served on the party, with notice to produce any offset.

Within six months after the performance of labor or furnishing materials, notice must be served on the county clerk, specifying the amount claimed, the person, the owner, the situation of the premises, &c.

*Lien on Vessel.* Every person performing labor, or furnishing materials, or articles for the building, repairing, furnishing or equipping any ship or vessel, or furnishing provisions or stores, or on account of wharfage, amounting to the sum of *fifty dollars* or upwards, contracted for by the master, owner, agent, or consignee, shall have a lien on such vessel, for twelve days after her departure from the port at which the debt was contracted to some other port within this state. In all cases lien ceases immediately after the vessel shall have left the state.

So, if a vessel be damaged by being run afoul of by another vessel, through negligence or misconduct of those navigating her, to the amount of fifty dollars, or more, the vessel sustaining such damage shall have a lien upon the other. Lien to be enforced within twenty days after the damage.

### LIEN LAW OF NEW JERSEY.

Every building erected or built within this state shall be liable for the payment of labor and materials, which shall be a lien on such building, and the land whereon it stands, including the lot or curtilage. When any building shall be erected in whole or in part, by contract in writing, it shall be liable to the contractor for work done, or materials furnished, provided such contract, or a duplicate, be filed in the office of the clerk of the county in which the building is situate, before such work is done or materials furnished.

On the refusal of master workman or contractor to pay any person who may have furnished materials, or any journeyman, he shall give notice in writing to the owner, and of the amount due, who shall retain the same out of the amount due such master workman, and pay it to the journeyman.

Any person intending to claim a lien, must within one year after the labor is performed, or materials furnished, file his claim, &c., with the clerk of the county to be recorded.

### LIEN LAW OF NORTH CAROLINA.

All debts contracted by the master, owner, agent or consignee of any ship, steamboat, or other vessel, for work done or materials furnished, for the building, repairing, furnishing or equipping of the same, or for pro-

visions or stores for the same, within this state, or on account of wharfage, and expenses of keeping such vessels, including the expense incurred in employing persons for taking charge of the same, such debt shall be a lien on such ship, steamboat, or vessel, and shall be preferred to all other liens, except mariner's wages.

### LIEN LAW OF OHIO.

Every person who shall perform labor, or furnish materials or machinery for constructing, repairing, or altering any boat or vessel, or for erecting any house, mill, manufactory, or other building, or appurtenance, by virtue of a contract with the owner thereof, shall have a lien on the same.

Every mechanic, or other person, doing or performing any work or furnishing materials in the erection or repairing of any building or boat, under a contract between the owner and builder, whether such work be performed as journeyman, laborer, carman, sub-contractor, or otherwise, or any person who shall furnish materials for work done, which has not been paid, may deliver to the owner of such building, or vessel, an attested account of the amount remaining unpaid, and such owner shall retain out of his subsequent payments to the contractor, the amount of such work, or materials furnished.

A *statement*, describing the property, and the items of labor, skill, materials, &c., must be made under oath, and the amount so sworn to, filed in the recorder's office of the county within *four* months from the time of performing such labor, or furnishing materials, with the written contract, if there be one, which shall operate as a lien for two years after commencement of such labor, or furnishing of such materials.

### LIEN LAW OF PENNSYLVANIA.

Every building erected within the city and county of Philadelphia, and in the counties of Alleghany, Armstrong, Beaver, Bedford, Berks, Blair, Bucks, Butler, Cambria, Carbon, Center, Chester, Clearfield, Columbia, Crawford, Cumberland, Delaware, Dauphin, Erie, Franklin, Huntingdon, Indiana, Juniata, Lancaster, Lebanon, Luzerne, Lycoming, Mercer, Montgomery, Mifflin, Northumberland, Perry, Schuylkill, Somerset, Susquehanna, Tioga, Union, Venango, Warren, Washington, York, and the boroughs of Easton, Lehigh, Bradford, Monroe, Clinton, Greene, Marion, M'Kean, Wayne, Fayette, Potter, Jefferson, Northampton, shall be subject to a lien for work done or materials furnished for, or about such building, and the land covered, or adjoining the same; and for gas fixings, and furnishing and erection of grates and furnaces.

Lien continues six months, although no claim be filed therefor. But if a statement of the claim be filed in the office of the prothonotary of the court of common pleas of the county where the building is situate, lien continues for five years.

*Protection of Mechanics in Pennsylvania.* All assignments of property by any person, chartered company, trustees or assignees on account of inability at the time of the assignment to pay their debts, the wages of minors, mechanics, and laborers, employed by such person or company, shall be preferred and paid before any other creditor; *provided*, that any one claim shall not exceed one hundred dollars.

### LIEN LAW OF RHODE ISLAND.

All persons who shall do work, or furnish materials for constructing, erecting, or repairing any building, canal, turnpike, railroad, or improvement, by contract with, or at the request of the owner, such owner being at the time the owner of the land, such building, canal, &c., together with the land, is made liable and stands pledged for all the work done, &c.

Lien is dissolved, if the work be done or materials furnished under a *written* contract, unless legal proceedings be commenced within four months from the time that any payment on such contract shall become due.

If the work is done, or materials furnished without a written contract, legal process must be enforced within six months from the time of commencing work, or delivery of materials. No person who shall have entered into a contract, whether in writing or not, shall have any lien, unless he shall within *thirty* days after commencing the work, give notice in

writing to the person against whose estate he claims a lien, that he has commenced the work, and that he shall claim the benefit of the lien.

Legal proceedings to enforce such lien, must be commenced by filing the amount or demand, in the office of the clerk of the town, describing the premises and to whom belonging, twenty days before the term of the supreme court in the county, which shall be holden not less than twenty days next after the commencement of the legal process aforesaid; the claimant shall file his petition with his bill of particulars, and description of the estate, in the clerk's office of said court, praying that the estate may be sold to satisfy his demand.

### LIEN LAW OF SOUTH CAROLINA.

Any mechanic who shall erect, improve or repair a building, shall have a lien thereon, for the amount justly due him therefor.

Contract must be in writing, signed by the parties to such contract and the proprietor of the premises or his lawful agent, in the presence of one or more witnesses.

The contract must contain a particular account of the work to be done, the materials to be furnished, and a description of the premises, and recorded in the register of mesne conveyance's office for the district in which such buildings are.

Lien to remain in force three years from the day of recording.

Lien not to impair any prior claim.

The lien shall be in no case for a greater sum than the just value which such building or improvement shall give to the land.

### LIEN LAW OF TENNESSEE.

1. Suits may be brought by a justice of the peace in all cases within his jurisdiction; and when attachment has been levied upon land, the papers may be returned to the circuit court. 2. No justice execution shall be a lien on land unless within twenty days after rendition of judgment an abstract of the same shall be filed with register of deeds of the proper county. 3 & 4 Provides that the lien law shall extend to foundry-men, and machinists, whether in wood or iron; also to journeymen and workmen.

When any mechanic or undertaker, by special contract with the owner of a lot of ground or tract of land, or his agent, shall construct, build or repair, or furnish materials for building or repairing any house, fixtures or improvements, or shall do any work upon said house, he shall have a lien upon the same, and the lot of ground upon which said building, or improvements and fixtures stand;—to continue for one year after the work is done or materials furnished.

The provisions of this act are also extended to the journeymen of said mechanic, or any other person that may be employed by or under him, to do any part of said work or furnish any materials, who shall be authorized to enforce the same in preference to said undertaker; *Provided*, notice in writing of said lien shall be first given to the owner, or proprietor, of said lot, tract of land, house or improvements, or his agent, at the time said work is begun or materials furnished. Claims not to exceed the amount agreed to be paid by the owner in his original contract with the undertaker.

When any debt is contracted by the master, owner, agent, or consignee of any steamboat, or other vessel, within this state, for work done or materials or articles furnished for building, repairing, fitting, furnishing, or equipping the same, or for wages due to the hands thereof, such debt shall be a lien on such steamboat or vessel. Suit must be commenced within three months.

### LIEN LAW OF TEXAS.

Masters, builders, and mechanics of every denomination, contracting in writing to erect buildings, shall have a lien on the same, and upon the tract, parcel or lot of land, upon which such building shall be put up.

Contract must be recorded with the clerk of the county, within thirty days after contract is made.

Under workmen and material men may deliver to the owner an attested account of the amount and value of the work or materials furnished; and it shall be the duty of such owner or agent to furnish his contractor with a

copy of such notice ; and if contractor fails to give written notice, within ten days, of his intention to dispute the claim, or if in ten days after giving such notice he shall refuse or neglect to have the matter adjusted, he shall be considered as assenting to the demand, and the owner shall pay the same when it becomes due. If the matter cannot be amicably adjusted, arbitrators shall be chosen, and their decision shall be final and conclusive.

#### LIEN LAW OF VERMONT.

Any person performing labor, or furnishing materials under written contract, for erecting, repairing, or altering any building, shall have a lien on such building and lot of land on which the same stands, which shall continue in force three months from the time when payment shall become due.

A copy of the contract must be lodged with the town clerk of the town where the building is situated. Action must be commenced by attachment within three months after payment shall become due.

Any person who shall perform labor or furnish materials for building, repairing, fitting, or furnishing any vessel, shall have a lien on the same for his materials and labor for four days after said vessel shall have been completed, and may secure the same by attachment.

Before lien can attach, payment must have been demanded of the owner, or person in whose care such vessel may be.

#### LIEN LAW OF VIRGINIA.

If a person owning or having an interest in land in a city or town, shall, by a writing signed by him, contract with another to pay him money for erecting or repairing any building or appurtenances of any building on such land, there shall be a lien thereon, from the time that said writing is admitted to record in the county or corporation wherein said land lies. But the said lien shall not be in force more than six months from the time when the money or last instalment shall become payable, unless a suit in equity shall have been commenced within said six months.

Any person who shall do any work, perform any labor, or furnish any materials, in erecting or constructing any dwelling-house or other building, in the city and county of Alexandria shall have a lien thereon. Notice in writing must be given to the owner of such house, within thirty days after the term of such person's employment has expired, or after the delivery of materials furnished, of the amount due him, and that he claims the benefit of the lien.

Lien is enforced by sale of such house under a decree of equity or a judgment at law in favor of the claimant.

Suit must be commenced within three months after completion of house, the performance of work, or furnishing of materials.

#### LIEN LAW OF WISCONSIN.

Persons furnishing labor or materials for erecting or repairing any dwelling house or other building, or machinery put up as a fixture, shall have a lien on the same, with the interest of the person or persons, owning such dwelling house, building, or machinery, and on the land upon which the building is situated, not exceeding forty acres, or if erected within the limits of any city, town or village-plot, not exceeding one acre.

Sub-contractors must give notice in writing to the owner within thirty days after the work is completed or materials furnished, of their intention to claim the benefit of the lien act. Action must be brought within one year.

Boats or vessels are subject to a lien for all debts contracted by master, agent, owner, or consignee, for supplies, materials for building or repairing, for work done, or services rendered on board, for wharfage, negligence, injuries, &c.

THE  
RIGHTS  
OF  
HUSBAND AND WIFE.

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[By marriage the husband and wife are one person in law ; that is, the legal existence of the woman is suspended during marriage. The common law rule, however, in relation to the rights of the parties, has been somewhat modified by the Statute Laws of the different states, *which see at page 130, et seq.*]

*Husband's Interest in Wife's Personal Estate.*—Marriage is an absolute gift to the husband of all the personal property, such as money, goods and chattels, and moveables of which the wife was actually and beneficially possessed at the time of marriage in her own right, and of such other goods and personal property as shall come to her during the marriage.

The husband can therefore dispose of the personal property of his wife as he pleases, and on his death it goes to his representatives, as being his exclusive property.

Of course, if the wife before marriage has her personal property properly secured to her own use, independent of her husband, or if personal property is given to a wife during marriage, and is properly secured to her own use, it will remain her property, and the husband will have no control over it.

*Husband's Interest in Debts due the Wife, termed Choses in Action.*—The husband has only a qualified interest in his wife's choses in action, which term comprises debts owing to her, arrears of rent, legacies, residuary personal estate, money in the funds, &c., and which are due to the wife at the time of, or during, her marriage.

The husband is entitled to his wife's choses in action, only on condition that he reduces them into possession during the continuance of the marriage ; for if he happen to die before his wife, without having reduced such property into possession, she, and not his personal representatives, will be entitled to it. So, if the wife die before the husband has reduced this property to possession, he will be entitled to receive only as her administrator, and it will be appropriated to the payment of her debts, and he will be entitled only to the balance.

What will amount to a reduction of the wife's choses in action into possession by the husband is sometimes a nice question to decide. It is well settled, that if the husband himself, or by attorney, collects and receives the amounts due, or if he assigns the wife's choses in action *for a valuable consideration*, or mortgages them, or if he recovers her debt by a suit in his own name, or if he novates the debt by taking new security in his own name, or if he releases the debt ; in all these cases the wife's interest in the property has ceased.

A mere intention to reduce the wife's choses in action into possession is not sufficient ; neither is a voluntary assignment of them by the husband without consideration ; nor an assignment of the husband's estate under the insolvent laws, unless the assignee reduces them to possession during the marriage ; nor the receipt by the husband of interest due on wife's choses in action during the marriage. In all these cases, the wife's right to the property, upon the death of her husband, remains.

If the husband commences an action upon a debt due his wife, in the name of himself and his wife, and he dies pending the suit, the action survives to her ; if therefore, the husband wishes to secure the debt to himself, he should commence the action in his own name.

Courts of equity, whenever their aid is invoked by the husband or his

assignees, to enable him or them to reduce to possession the wife's choses in action, require the party applying to secure a reasonable portion of the proceeds to the separate use of the wife.

*Husband's Interest in Wife's Real Estate.*—As to the real estate of the wife, at the time of or during the marriage, the husband is entitled to take the rents and profits thereof, during their joint lives. His interest ceases with his death, if the wife survive him. Upon the death of the wife, the husband surviving, his interest ceases, and the estate goes to her heirs, unless the husband is entitled to a life estate therein as tenant by the courtesy. The husband has a life estate in the real estate of the wife, during his own life, whenever there has been a child of the marriage born alive, and he is then said to be a tenant by the courtesy. It is sufficient that the child be born alive, though it live but a moment.

The husband also becomes possessed of the wife's leases for years, and he may dispose of them as he pleases during his life. If he does not dispose of the same during his life, and his wife survive him, she will be entitled to them.

*Husband's Liability for Wife's Debts before Marriage.*—For all debts owing by the wife before marriage, the husband is liable;\* but if they are not recovered during the marriage, he is discharged, for his liability ceases with the death of the wife. In the application of this rule, it makes no difference whether the husband has, or has not, received any property by his wife.

Such debts, however, still remain the debts of the wife, and if she survive her husband, she continues personally liable; and if she die before her husband, her property will be liable.

*Husband's Liability to Maintain his Wife.*—The husband is bound to provide necessaries suitable to her situation, and his condition in life; and if he fails to do this, and she contracts debts for them, he will be liable for those debts. Where the wife is in the habit of procuring necessary articles for the family, the husband will be liable for the debts which she has contracted for that purpose, unless he shall give notice to the contrary, and himself furnish her with necessaries.

The husband is only liable to furnish such necessaries as are suitable to her situation, and his condition in life; and his liability does not extend beyond that.

If the husband abandons his wife, or sends her away, or if they separate by consent, without any sufficient and suitable provision for her maintenance, he will be liable for her necessaries, and for debts contracted by her in procuring them.

If the wife elopes, and deserts her husband, he will be no longer liable for her necessaries. While the husband is not guilty of cruelty, and is willing to provide her a home, with suitable necessaries, he is not bound to furnish them elsewhere.

If a wife who has left her husband, conducts herself with propriety during her absence, and offers to return to her husband, and he refuses to receive her, it is still an unsettled question whether he will in such a case be liable for her necessaries. If, however, her elopement is accompanied with adultery, he is not bound to receive her back, and will not be liable for her necessaries, even if she offer to come back.

All persons supplying food, lodging, and clothing to a married woman living separate from her husband, are bound to make inquiries, and they give credit at their peril.

*Dower of the Wife in Husband's Real Estate.*—Upon the death of the husband, his wife is entitled to be endowed, for her natural life, of the third part of all the lands whereof he was seized, at any time during the marriage.

It is not necessary, to entitle the widow to dower, that the husband should be seized of the lands at his decease; it will be sufficient, if at any time during the marriage, he was seized, although he may have conveyed them to a third person before his decease, provided the wife has not relinquished her right of dower in the same.†

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\* In Massachusetts, Maine and New York the husband is not liable for his wife's debts contracted before marriage.

† In Vermont, Connecticut, Tennessee, North Carolina, and Georgia, the widow is only entitled to dower in lands whereof the husband died seized. In Maine and New Hampshire, she is not entitled to dower in wild lands.

Where land is conveyed to the husband, and immediately mortgaged back to secure the purchase money, the wife will not be entitled to dower in the land as against the rights of the mortgagee.

In nearly all of the states, if lands are held by the husband as trustee, the wife will not be entitled to be endowed of them, unless the husband has a beneficial interest therein.

Where property is mortgaged, the wife is entitled to dower in the husband's equity of redemption. But if she claims her dower, she is bound to contribute ratably towards the redemption of the mortgage.

*How wife's right to dower may be barred.*—A divorce from the bonds of matrimony bars the wife's right to dower. But in most of the states provisions are made for the wife, where a divorce is not obtained on account of her misconduct, and in some states divorce is not a bar to dower, unless caused by her guilt.

Elopement of the wife, accompanied with the commission of adultery, is sufficient, in most of the states, to bar the wife from dower, unless the husband becomes reconciled to her.\*

The wife may release her dower, and it is very common for her to join with her husband in conveying his land, for that purpose.

*Fraud will annul marriages.*—Fraud will sometimes be a ground for annulling a marriage; but error about the *family* or *fortune* of the individual, though produced by unfair representations, will not at all affect the validity of a marriage. Marriages may be dissolved by death or by divorce.

*Marriages may be dissolved by divorce.*—Divorces are of two kinds; from the bonds of marriage, and from bed and board. The first arises from some of the legal disabilities already mentioned. Adultery also is a cause for divorce from the bonds of matrimony; so, also, in some states, is imprisonment for life, or a certain term of years; and in a few states, ill usage or desertion is a sufficient cause. In a divorce from the bonds of matrimony, the marriage is declared null and void, and the parties, (or at least the innocent one, where the marriage has been dissolved by reason of the guilt of one of the parties,) may in general marry again.

A divorce from bed and board is not a dissolution of the marriage, enabling the parties to marry again; but merely authorising and directing them to live separate. It is ordinarily granted on account of extreme cruelty towards, or desertion of, the wife by the husband.

Upon a decree of divorce, a reasonable provision is made, by the court, for the wife, out of the husband's property, unless the divorce has been caused by her guilt.

*Powers of the husband.*—A married woman has no authority to make a contract without the authority or assent of her husband, express or implied. If a wife sell or dispose of the goods of the husband, the sale is void; or if she buy goods without his consent, he is not chargeable with them. So, also, a *note, bill, or lease, signed or indorsed by a married woman, is void.*

If the wife be injured in her person or property, she can bring no action for redress, without the concurrence of her husband; neither can she be sued, without making the husband defendant.

In the civil and criminal trial, husband and wife are not generally allowed to be *evidences* for or against each other, unless the offence is between themselves; but from this rule there are several exceptions. The wife is admitted as a witness against the husband in an indictment for forcible abduction and in marriage; and in bigamy, though the first wife cannot be a witness, the second may, the second marriage being void.

Where, too, the husband has allowed the wife to act as agent in the management of his affairs, or in any particular business, the representations and admissions of the wife, in the course of such agency, are admissible in evidence against the husband. That, in an action against the husband, for board and lodging, where it appeared the bargain for the apartments had been made by the wife, and that, on a demand being made for the rent, she acknowledged the debt, the plaintiff was held entitled to recover. So, also, the admission of the wife, as to an agreement for suckling a child, was allowed to be evidence against the husband.

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\* In New York, however, the wife is not barred of her dower, unless convicted of adultery, or divorced, or unless the husband shall have commenced proceedings to obtain a divorce.

## RIGHTS IN PROPERTY OF MARRIED WOMEN.

*Massachusetts.*—1859.—A married woman may hold property, real and personal which she now owns as her sole and separate property; or that which comes to her by descent, devise, gift or grant, or which she acquires by trade, business, services, or labor carried on or performed on her sole account; or which a woman married in this state owns at the time of her marriage, and the rents, profits, and proceeds of all such property shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected, and invested, by her in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts.

A married woman may sell and convey her separate property, enter into any contracts in reference to the same, carry on any trade or business, and perform any labor or services on her separate account, and sue, and be sued in all matters having relation to her separate property, business, trade, services, labor, and earnings. But no conveyance by her of shares in a corporation or of real property (except a lease not exceeding one year) shall be valid, without the assent of her husband in writing, or his joining with her in the conveyance, or the consent of one of the judges of a court.—Trustee may be appointed by supreme court, on petition of wife, to take charge of her separate property, to be held in trust.

Real estate of wife, not her separate property, may be conveyed by joint deed of husband and wife,—but the wife shall not be bound by any covenant contained in such joint deed.

Husband is not liable for the contracts of wife relating to her separate property, nor for her debts contracted before marriage, after June 3, 1855.

A married woman having separate property, may be sued for any cause of action which originated before marriage, and her property may be attached and taken on execution with the same effect as if she were single.

Payment of wages, &c., of married woman may be made to her, and her receipt for the income of property held in trust for her, or the principal, or money deposited by or due to her, before or after marriage, shall be valid.

The real estate, and shares in any corporation standing in the name of wife, shall not be liable for debts of husband contracted after June 3, 1855.

Insurance may be effected by husband or any other person, to inure to the use of married woman and her children.

Any married woman may make a will; but such will shall not deprive her husband of his rights as tenant by the curtesy; and she shall not bequeath away from him more than one-half of her personal property, without his consent in writing.

Marriage settlement or contract cannot be invalidated, nor can husband convey or give property to his wife.

Marriage contracts may be made by parties before marriage, and limit to husband or wife an estate in fee or for life in the whole or any part of the property, and designate any other lawful limitations.

There shall be annexed to such contract a schedule of the property intended to be affected thereby, containing a sufficiently clear description of the property to enable any creditor of the husband or wife to distinguish it from all other property; and such contract and schedule shall, either before the marriage or within ninety days thereafter, be recorded in the registry of deeds for the county or district in which the husband resides at the time of the record, or if he is not a resident within this state, then in the registry of deeds for the county or district in which the wife resides at the time of the record, if it is made before the marriage, or in which she last resided if made after the marriage. If not so recorded the contract shall be void. It shall also be recorded in every county or district in which there are lands to which it relates.

A married woman coming into this state without her husband, he never having lived with her in this state, shall have all the rights and powers given to married women in the preceding provisions. When parties married out of this state, come here to reside as husband and wife, the wife shall retain all property which she had acquired by the laws of any other state or country, or by marriage contract, &c.; and their so residing here shall have the same effect with regard to their subsequent rights and liabilities, as if they had married at the time of their first residing together in this state.



When a wife is abandoned by her husband, or he is sent to the state prison, she may be authorized by the court to sell, convey, and receipt for, her real and personal estate; and to make contracts, and sue and be sued; such authority to continue until the husband returns to the state, and claims his marital rights, or is discharged from prison; and no suit shall be abated by his return.

Every woman shall be entitled to her dower at common law in the lands of her husband, to be assigned to her after his decease; and also in the right of redemption of mortgaged premises. A married woman may bar her right of dower [and homestead] in any estate conveyed by her husband, by joining him in the deed, and releasing the same; or by releasing the same by a subsequent deed executed jointly with her husband, or with his guardian;—also, by a jointure of freehold estate in lands for the life of the wife at least, settled on her, with her assent before marriage, and to take effect in possession or profit immediately on the death of her husband; her assent to such jointure being expressed, if she is of full age, by becoming a party to the conveyance, and if under age by joining with her father or guardian in such conveyance;—and also any pecuniary provision made for an intended wife, in lieu of dower, shall, if assented to by her before marriage, bar her right to dower;—and also by provision in the will of husband in lieu of dower, at her election within six months after probate of the will.\*

A widow is allowed her articles of apparel and ornaments, and the apparel of her minor children, and may remain in husband's house forty days after his death, and have her reasonable sustenance out of his estate, together with such other necessities as the judge shall order.

After the payment of the debts of the deceased, the widow, if there be issue, is entitled to one-third of the personal property; if there is no issue she is entitled to five thousand dollars, and to one-half the excess of such residue above ten thousand dollars.

Homestead acquired by any householder, vests in the widow and children after his death, and continues for their benefit, until the youngest child is twenty-one years of age.

When a widow is entitled to dower in lands of which her husband died seized, she may continue to occupy in common with the children or other heirs of the deceased, or receive one-third of the rents, &c., so long as the heirs do not object.

See "Rules for the distribution of Real and Personal Estates," in *Sequel to Business Man's Law Library*, pages 65, 66, and 67.

*Maine.* All the real and personal property, which a woman possessed at marriage, and that which she receives by direct bequest, devise, gift, purchase, or distribution after marriage, she shall hold as her separate property, and such property shall be exempt from any liability for the debts and contracts of her husband; and she may manage, sell, convey, and devise the same by will, as if unmarried, and without the assent of her husband. Marriage does not vary her rights of property.

Married woman may release to her husband the right of controlling her property, and disposing of the income for their mutual benefit.

Married woman may prosecute or defend any suit in law or equity; and lease any of her property, by deed, in her own name.

The husband shall not be liable for debts contracted by wife before marriage, after April, 1852, but the property of the wife, held in her own right, may be attached for such liabilities.

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\* *Devise to a Wife in lieu of her dower.*—Also, I devise to my wife, S. B., the house in which I now live, and the buildings appurtenant to the same, and the household furniture of every kind now being in said house, and the following described tract of land, &c. To have and to hold to her, the said S. B., for the term of her natural life, in lieu and in full satisfaction of her dower, and of all right of dower in and out of all the lands and tenements whereof I shall die seized [or of all her right of dower in any and all lands and tenements whereof I now am or have been, or hereafter shall be, seized during my marriage to my said wife.]

Husband and wife, before marriage, may determine rights in each other's estate by marriage settlement.

Wife is authorized to make contracts, and receive her property when her husband abandons her, or is confined in the state's prison; and all such contracts shall be binding upon her and her husband.

Wife coming from another state without her husband, may make contracts, dispose of property, sue and be sued, as if unmarried.

A widow is entitled to dower in the lands of her husband, to be assigned to her after his decease, unless she is lawfully barred thereof.

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*New Hampshire.* Parties may contract before marriage, that after marriage, wife may hold all her real and personal estate, free of the interference or control of her husband, but the real estate must be recorded.

Any property by devise, conveyance, or bequest, made to a married woman, shall be for her sole and separate use, without the interference of a trustee, free from the control of her husband; she shall in like manner hold any property, under a deed of trust, made either before or after marriage.

When any husband shall have deserted his wife for the space of three months, without making suitable provision for her support, she shall be entitled to hold in her own right and to her separate use, any property acquired by her in any way, and the earnings of her minor children, and may dispose of the same; and the judge of probate may authorize the property of the husband to be sold for the maintenance of herself and children.

Whenever a married woman shall be entitled to hold property in her own right, and to her separate use, she may make contracts, sue and be sued, and if twenty-one years of age, dispose of her property by will to any devisee, except her husband, provided, that the rights of the husband acquired by marriage in any estate so devised shall not be injuriously affected; but if she make no will her property shall descend to her heirs.

If married woman is twenty-one years of age, she may join with her husband in the conveyance of real estate, but in releasing dower she need not be of full age.—If she wishes to give real estate to her husband the conveyance must be by deed.

No marriage can be contested if persons live together as husband and wife for three years, and until the decease of one of them.

No widow shall be entitled to dower in any lands, unless the same were, during the marriage and possession of the husband, in a state of cultivation, or were used and kept as a timber lot, and occupied by some farm or tenement owned by the husband; and she shall be endowed of so much of the real estate as will produce a yearly income equal to one-third of the yearly income thereof at the time the husband died or parted with his title.

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*Vermont.* Any woman possessed at marriage of real and personal property in her own right, may hold the same to her separate use, together with all property she may acquire after marriage, by gift, devise, &c., and such property shall not be liable for the sole debts of her husband.

Rents and profits of wife's real estate, acquired before or after marriage, are not liable for husband's debts. She may also devise her own property.

A married woman is allowed to insure the life of her husband, the insurance to inure to her sole benefit, free from his liabilities, and in case of her death before the decease of her husband, then the amount of insurance free from the claims of the representatives of her husband, to be paid to her children, or their guardian if under age; but such exemption shall not apply when the amount of premium annually paid shall exceed three hundred dollars.

The widow is entitled to dower, or the use during her life of one-third of the real estate of which her husband died possessed. If there are no children or representative of children, she is entitled to one-half the estate.

The widow may be barred of her dower, when a jointure shall have been settled on her by her husband or other person, or some pecuniary provision shall have been made for her, before her marriage, with or without her consent, or after marriage, with her consent, to take effect after the death of her husband, and expressed to be in lieu and discharge of her dower; or, when the husband, by will shall have made provision for his widow, and it appears to the probate court that it was intended to be in lieu of dower.

*Rhode Island.* All the real and personal estate which any woman possessed before marriage, or which may become hers after marriage, or may be acquired by her industry, shall be for her sole and separate use, and the same and the income thereof, shall not be liable for the debts of her husband, either before or after his death; and in case of sale, the proceeds may be invested in the name of the wife. Husband may receipt for wife's rents and profits, unless previous notice shall be given in writing to the debtor, in which case the receipt of the wife shall be a sufficient discharge.

The chattels real, household furniture, plate, jewels, stock in corporations, money in savings banks, interest, and mortgages, which are the property of any woman before marriage, or which may become her property after marriage, shall not be sold, leased, or conveyed by the husband unless by deed in which the wife shall join as grantor.

Wife may sell and convey any of her personal estate and make contracts, but shall not transact business as a trader.

Husband and wife being of lawful age may convey real estate by deed in writing, signed, sealed and delivered by them respectively.

Married woman, being twenty-one years of age, may dispose of her real estate, and being eighteen years and upwards dispose of her personal estate, by will. Rights of husband by curtesy shall not be impaired.

Wife's property may be attached for her debts.

In all actions relating to the property of any married woman, the husband and wife shall jointly sue and be sued.

Any policy of insurance (the annual premiums of which shall not exceed \$300) on the life of any person expressed to be for the benefit of the wife, shall inure to the benefit of the wife and children.

All sums of money deposited in any Savings Institutions by any married woman shall be secured to her sole and separate use, and be subject to her disposal.

The widow is entitled to one full and equal third part of the lands, tenements, and hereditaments whereof her husband or any other to his use, was seized of an inheritance at any time during the intermarriage.

Wife may release her right of dower by deed or jointure in lieu of dower

*Connecticut.* The interest of a married man in the real estate of his wife, belonging to her at the time of the marriage, or which she may have acquired after the marriage by devise or inheritance, cannot be taken on execution against the husband during her life, or the life or lives of children, the issue of such marriage.

All property, real or personal, owned by a married woman, before marriage, shall remain her separate property.

All real and personal property acquired by personal services of wife, or during the abandonment of her husband, is her separate estate. Wages of a married woman must be paid to her, and her receipt is valid therefor.

When the real estate of a married woman is sold and the avails invested in her name, it is her separate estate.

All personal estate which shall accrue to any married man, during marriage, in right of his wife, by virtue of bequest to her, or distribution to her, as heir at law, and all property derived from the sale or investment thereof, vests in him in trust for his wife; and at his decease, if not disposed of, vests in the wife, or her heirs.

The husband is entitled to the rents and profits of such estate, but they cannot be taken for his debts, except contracted for the support of his wife and children, after the estate has vested in him. No sale of such estate is valid, unless by consent of the wife, or if she is dead, the consent of those in whom the estate has vested, who must join with the husband in the conveyance thereof.

Courts of probate can remove husband from being trustee and appoint a trustee in his place.

Married woman may dispose of her property by will. Insurance on the life of any person, for her benefit, will inure to her use, and the amount of insurance shall be paid to her and in case of her death, to her children, provided the annual premium shall not exceed \$150.

A widow has right of dower in one-third part of the real estate of which her husband died possessed in his own right, to be to her during her natural life.

## 134 RIGHTS IN PROPERTY OF MARRIED WOMEN.

*New York.*—1858.—Any married woman, by herself, and in her name, or in the name of any third person, with his assent as her trustee, may cause to be insured the life of her husband; and in case of her surviving her husband, the amount of insurance becoming due shall be payable to her, for her own use, free from the claims of the representatives of her husband, or any of his creditors; but such exemption shall not apply where the amount of the annual premium paid shall exceed three hundred dollars. In case of the death of the wife before the decease of her husband the insurance shall inure to the children for their use, and to their guardian, if under age.

The property owned by her at the time of her marriage is not subject to the disposal of her husband, nor liable for his debts.

A married woman may receive by inheritance, or by gift, grant, devise, or bequest, from any person other than her husband, and hold to her separate use, and convey and devise real and personal property, and any interest and estate therein, and the rents, issues and profits thereof, in the same manner as if she were unmarried, not subject to the disposal of her husband nor liable for his debts. Trustees holding real or personal property of a married woman, under deed or otherwise, on her written request, accompanied by a certificate of the Justice of the Supreme Court, shall convey to such married woman the whole or any part thereof, for her sole and separate use. All contracts made between parties in contemplation of marriage, shall remain in full force after such marriage takes place.

When a deposit is made in any savings bank by a female, before or after marriage, in her own name, it shall be lawful for the officers of such bank to pay such depositor, and her receipt shall be a discharge to the corporation.

A widow shall be endowed with the third part of all the lands whereof her husband was possessed, of an estate of inheritance at any time during the marriage.

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*New Jersey.* The real and personal estate of any female, which she shall own at the time of her marriage, and the rents and profits thereof, shall not be at the disposal of her husband, nor liable for his debts, but shall continue her sole and separate property.

Married woman may receive, by gift, grant, devise or bequest, and hold to her sole and separate use, as if she were single, real and personal property, and the rents and profits thereof, not subject to the disposal of her husband, nor liable for his debts.

Contracts made between persons before marriage, shall remain in force after such marriage takes place.

A married woman is allowed to insure the life of her husband, in her own name, or in the name of a third person, with his assent, as her trustee; the amount of insurance shall be payable to her, for her own use; and in case of her death before the decease of her husband, then the insurance shall be paid to the children, for their use, if of age, if not to their guardian; but such exemption shall not apply where the annual amount of premium paid shall exceed one hundred dollars.

The widow, whether alien or not, is endowed with an estate for life of one-third of all the lands, of which the husband was seized during marriage, to which she has not released her right in the manner prescribed by law.

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*Pennsylvania.* Every species of property, real, personal, or mixed, belonging to a woman, before, or accruing in any way after marriage, shall be owned as her separate property; and shall be exempt from execution for her husband's liabilities, and shall not be conveyed or mortgaged without her written consent first obtained, and duly acknowledged.

Her husband shall not be liable for her debts contracted before marriage; nor on any judgment recovered against him for wrongs and injuries done by her to others in the way of trespass, defamation, assault and battery, &c.; but in such cases execution shall be first had against the property of the wife.

A married woman may dispose of her separate property by will, executed in the presence of two or more witnesses, neither of whom shall be her husband.

Where judgments are obtained on debts contracted for necessities for

the support of the family of any married woman, execution shall first issue against the husband; and if no property be found, the separate property of the wife may be taken, provided it is proved that the wife contracted the debt, or that it was incurred for articles necessary for the support of the family.

A married woman is under the same restrictions, as regards the husband, as the husband is, in regard to her, in respect to bequeathing or devising her property by will, viz.: so that a husband may, against her will, elect to take such share and interest in her estate as she can elect to take against his will, in his estate, or to take only her real estate as tenant by the curtesy; provided that the rights of the wife shall not be affected by virtue of any authority or appointment contained in any will or deed, to grant, bequeath and devise, as heretofore, any property held in trust for her sole and separate use.

When a husband from drunkenness, or other cause, neglects or refuses to provide for his wife, or deserts her, she shall have a right to act and contract, and her property, real and personal, shall be subject to her disposal, free from the interference of her husband, and at her death shall go to her next of kin; and whenever a husband, or father, from drunkenness, or other cause shall neglect or refuse to provide for his children, the mother shall have all the rights, and be subject to all the duties due between a father and his children, and may receive their earnings, and bind them to apprenticeship without the interference of such husband.

No husband who has wilfully neglected to provide for his wife, and deserted her for one year, or upwards, previous to her death, shall have a right in her real or personal estate as tenant by curtesy.

*Indiana.* All real estate acquired by wife before or after marriage, or any interest therein, and rents and profits arising therefrom, is declared her separate property, and is not liable for her husband's debts. Her property shall be first liable for all debts contracted by her before marriage. When the action concerns her separate property she may sue alone. If a husband and wife are sued together, and the action relates to her separate property, the wife may defend her own right, and, if the husband neglect to defend, she may defend his right also.

At the husband's death widow may select and take property not exceeding in value three hundred dollars.

Will made by unmarried woman is revoked by marriage. A married woman may devise her real estate.

The widow receives in fee simple, one-third of the real estate of the husband, free from all demands of creditors, provided however, that where the real estate exceeds in value ten thousand dollars, the widow shall have one-fourth only, and where it exceeds twenty thousand dollars, one-fifth only as against creditors.

The widow is entitled to one-half the personal property of the husband if there be but one child, and one-third if there be more than one.

If the widow marry again holding such real estate, she cannot, with or without the consent of her husband, alienate the same, but at her death it descends to the children of the husband from whom it was derived.

The personal property of the wife, held by her at the time of her marriage, or acquired during marriage, by descent, devise or gift, shall remain her own property, to the same extent and under the same rules as her real estate so remains, and on the death of the husband before the wife, such personal property shall go to the wife, and on the death of the wife before the husband, shall be distributed in the same manner as her real estate descends under the same circumstances.

Tenancies by curtesy and dower are abolished.

*Illinois.* Married woman may dispose of her separate estate, real and personal by will.

A widow is endowed of a third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during marriage; unless she has relinquished her right of dower by joining her husband in a deed of conveyance, or accepted a jointure before marriage, or evinced her assent by her becoming a party to the conveyance, by which it shall be settled, if she be of full age, or, if she be an infant, by her joining with her

father or guardian in such conveyance, and also by provision in the will of husband in lieu of dower, which she may elect to take within a year.

Widows are also entitled, after the payment of debts, to one-third of the personal estate of their husbands, as their property forever. If there be no child or descendants of the husband, then one-half of the real estate, and all the personal estate goes to the widow.

The real estate of the wife may be conveyed by her joining with her husband in the deed, if she be above the age of eighteen.

*Michigan.* The real and personal estate of any female acquired before marriage, and all property to which she may afterward become entitled by gift, grant, inheritance, or devise, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations, or engagements of her husband, but is liable for her own debts contracted before marriage, and may be devised and bequeathed by her as if she were unmarried.

Rents, profits, and income of married woman's property to remain her separate property.

Ante-nuptial contracts binding.

In case of abandonment by husband, the statute provides similar provisions to those of Massachusetts for the sale of her property, and her power to contract and sue.

Married woman may, in her own name, or in the name of a third person, with his assent, insure the life of her husband, to inure to her benefit and her children; but amount of premium annually paid not to exceed three hundred dollars.

The wife is entitled to dower in all lands of which her husband was seized of an inheritance during marriage.

The widow may be barred of her dower by joining her husband in the deed, or by a jointure settled on her with her assent before marriage.

If the deceased left no children, his estate, undisposed of by his last will, descends to the widow during her life, and after her decease to his father.

The widow shall have all her articles of apparel or ornament, and all the wearing apparel and ornaments of the deceased, and the household furniture, not exceeding two hundred and fifty dollars, and other personal property, to be selected by her, not exceeding in value two hundred dollars. After payment of the debts, the widow is entitled to the same share of the personal estate as a child would be entitled to.

*Wisconsin.* The real estate, and the rents, issues and profits thereof, of any female now married, shall not be subject to the disposal of her husband, but shall be her sole and separate property.

The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, with its rents, &c., shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her separate property.

A married woman may receive by inheritance, gift, grant, devise or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, and any interest or estate therein, and the rents, &c., in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband, nor be liable for his debts.

A married woman is allowed to insure the life of her husband in her favor, or the husband, or any other person may insure his own life in her behalf, to inure to her sole and separate use and that of her children; and in case of the death of such married woman, it shall be lawful for any court having the authority, to appoint a guardian for the minor children, who shall have power to manage the interest arising from such policy, or the proceeds thereof.

When a husband abandons his wife, either from drunkenness or other cause, or neglects or refuses to provide for her support, or the support and education of her children, such married woman shall have a right, in her own name, to transact business, collect her own and her minor children's earnings, for her own and their support, free from the control and interference of her husband.

The widow shall be entitled to dower of one-third of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she is lawfully barred.

LANDLORD'S & TENANT'S  
ASSISTANT  
OR,  
LAWS OF TENANCY.





IMPROVED EDITION OF THE  
**LANDLORD'S & TENANT'S**  
**ASSISTANT,**

CONTAINING

**THE LEGAL RIGHTS, DUTIES, AND LIABILITIES  
OF LANDLORDS AND TENANTS;**

THE

**RULES OF LAW ON THE SUBJECT OF DIVISION FENCES — PAR-  
TITION WALLS — NUISANCES — ANCIENT LIGHTS — HIGH-  
WAYS — PRIVATE WAYS — RUNNING WATER, &c. ;**

AND A

**SELECTION OF LEASES,**

**AGREEMENTS — ASSIGNMENTS OF DO. — SURRENDERS OF DO. —  
LANDLORD'S AND TENANT'S NOTICES TO QUIT, &c. ;**

WITH THE

**STATUTE LAWS**

**OF ALL THE STATES IN RELATION TO TENANCIES, HOLDING  
OVER, COLLECTING RENT, NOTICES TO QUIT, AND EJECTMENT.**

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No Landlord or Tenant should be without this Work.

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**By I. R. BUTTS,**

**Author of the "Business Man's Assistant," — "Trader's Guide," — "Merchant Shipper  
and Common Carrier's Assistant," — "Laws of the Sea," &c.**

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**BOSTON:**

**PUBLISHED BY I. R. BUTTS,  
CORNER OF SCHOOL & WASHINGTON STREET,  
Over Ticknor & Field's Bookstore.**

## ADDENDA.

### *Late Decisions.*

Where a house was let for five years, at a rent of \$1400 a year, with a proviso, that either party might terminate the lease by giving the other party six months' notice in writing, it was held that the six months' notice by either party to terminate the lease, must be so given as to expire at the end of a year of the term. 5 Cushing, 99.

An assignment of an estate by a tenant at will terminates the tenancy. 6 Cushing, 87.

A tenancy at will, under a verbal lease, dependent on a condition, is terminated by a breach thereof, neither party being entitled to notice; and if the tenant holds over he is a tenant at sufferance. 5 Cushing, 133.

On the sale of an estate, by the Landlord, the tenancy at will is terminated, and the tenant is not entitled to notice.— It may be said, that if a landlord is desirous of speedily getting rid of a tenant, he may convey away his estate, and the purchaser may then enter, or have the summary process provided by statute, without giving the three months' notice. If this should be done colorably or fraudulently, without any intent to alienate, it might, like other fraudulent and colorable acts, be held void. But if the landlord at will does in fact alienate, it is clear, that by operation of law the tenancy is at an end. It is a well established rule of law, that upon the conveyance of an estate the tenancy at will must terminate. The alienee does not become the landlord at will of the former tenant at will, nor does the tenant at will become tenant to the alienee. Who then would be entitled to recover rent of the tenant? Not the alienee who has become the owner, nor the alienor who has parted with all his interest, and ceased to be landlord. 5 Cushing, 553.

If the tenant is evicted, (that is, turned out,) from the premises by a superior title, (that is, by sale of the estate, or otherwise,) before the rent is due, he will be discharged from the whole rent. [See further on the same subject at pages 10 and 52]

There is no contract, still less a condition, implied by law, on the leasing of real property, that it is fit for the purpose for which it is let, or if fit that it shall continue so. A tenant must pay rent for the whole term, though the house be blown down, destroyed by fire, or abandoned on account of a filthy nuisance, destructive to the health of the family. *Mass. Dec.* [unless there is an express covenant to the contrary.] See also pp. 39 to 41, and 119, n.

In a tenancy at will, where the rent is payable monthly, a month's notice must be given to quit at the expiration of a month from the day when the rent is payable. *Mass. Dec.* [The same rule is applied when the rent is payable weekly or quarterly.] Unless a month's notice is given to quit at the expiration of a month from the day when the rent is payable, the notice is insufficient. *Mass. Dec.*

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This work is divided into Four Parts, as follows:—

- 1.—THE COMMON LAW RELATING TO LANDLORD AND TENANT.
  - 2.—THE COMMON LAW IN RELATION TO DIVISION FENCES, WALLS, NUISANCES, PRIVATE WAYS, ETC.
  - 3.—THE STATE LAWS RELATING TO LANDLORD AND TENANT.
  - 4.—FORMS OF LEASES, GUARANTEES, ASSIGNMENTS, SURRENDERS, NOTICES TO QUIT, ETC., ETC.
- 

Entered, according to Act of Congress, in the year 1848,

BY I. R. BUTTS,

in the Clerk's Office of the District Court of the District of Massachusetts.

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## DIRECTIONS TO THE READER.

[The first part of this work is occupied with a statement of the **RIGHTS AND LIABILITIES OF LANDLORD AND TENANT** under the common law, which prevails in all the States, excepting Louisiana, where the civil law obtains. To ascertain the law respecting any question that may arise, first examine the principles of the common law as here stated, then turn to the statutes of your own State (which will be found in the last part of this work,) and see if there is any statute law affecting the subject, if not, follow the common law,—if there is, follow the regulation of the statute.]

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# RELATION

## BETWEEN

# LANDLORD AND TENANT.

---

THE relation between Landlord and Tenant exists wherever there is a contract for the possession and profits of lands, or tenements, for a determinate period, on the one side; and a recompense by payment of rent, or some reciprocal consideration, on the other.

The contract is called a *Lease* or *Demise*; and is a species of conveyance to a person either for one thousand, one hundred, ten, or any other number of years, months or days. Any words are sufficient which explain the intents of the parties; and whether such words run in the form of a license, covenant, or agreement, they will, in construction of the law, amount to a lease as effectually as if the most proper and pertinent words had been used for the purpose.

### A TENANCY FROM YEAR TO YEAR

Occurs where the premises are let without any limitation as to the time the tenant is to occupy them. This species of estate, in olden times, was called a tenancy at will, from the fact that it might be put an end to at any time by either party. The inconvenience and injustice of suffering the estate to be determined at the will of either party, early induced the courts to decide that, where an annual rent is reserved, though no certain term is agreed on, the estate shall be construed to be a tenancy from year to year; and that each party is bound to give *reasonable notice* of an intention to terminate the tenancy. If the tenant be placed on the premises, without any terms prescribed, or rent reserved, and as a mere occupier, he is strictly a tenant at will.

*Six months' notice* on either side, and ending at the expiration of the year, is necessary, by the *common law*, to determine a tenancy from year to year. This rule of six months' notice prevails in many of the States, and in others the courts require

reasonable notice to be given. Nearly all the States now have statutes regulating the time of notice, and landlords and tenants must refer to the statutes of their respective States for the rule. [The statutes of the several States are to be found in the last part of this work.]

In the city of New York, if lands or tenements be occupied without any specified term of duration, the occupation is deemed valid until the first day of May next after the possession, under the agreement, commenced; and the rent is deemed payable at the usual quarter days, if there be no special agreement to the contrary.

A tenant from year to year is, of course, liable for *voluntary* waste committed by him. And, to a certain extent, he is liable for *permissive* waste; *for he is bound to make ordinary tenantable repairs—such as to keep the house wind and water tight, and to repair windows and doors broken by him; but he is not bound to make lasting repairs.* If, however, the house be in want of substantial repairs, or be otherwise unfit for occupation, the tenant is not bound to repair, and may quit without paying rent.—5 Carr. & P. 230; 7 D. & R. 117; 1 Mov. & Rob. 112.

## A TENANCY AT WILL

Continues, according to the old law, during the pleasure of the parties. In modern times, the Courts require either party desirous of terminating the tenancy, to give reasonable notice of his intention. Most of the States have statutes regulating the time of notice, and landlords and tenants must refer to the statutes of their respective States for the rule. Where there is no statute regulation, a reasonable notice must be given, as, where the rent is payable quarterly, three months' notice; if monthly, one month's notice, &c. For the purpose of *notice to quit*, a tenancy at will is treated by the Courts as a tenancy from year to year; but in every other respect it retains its character of a strict tenancy at will.—8 Cowen, 13.

Tenancies at will, found to some extent in every State, are, perhaps, more numerous in Massachusetts, where, by the Revised Statutes, all tenancies not created by *written* agreement are declared to be mere tenancies at will.

If a person enters and enjoys lands under a lease which is void, and pays rent, he is a tenant at will.

A tenancy at will may be determined by either party's giving the notice required by the statutes, or, in a State where there is no statute regulating the time of notice, by giving reasonable notice.

There are other ways than by giving notice, by which tenancies at will are determined. Thus, a tenancy at will is determined by the *death* of the landlord or tenant, (17 Mass. 282); or by the *sale* of the premises by the landlord (10 Metc.

223); so also it would seem, upon the same principle, the leasing the premises by a *lease in writing*, determines the tenancy.—10 *Met.* 298.

When the tenancy is thus determined by *death*, or by the *sale*, or letting by *written lease*, of the premises, or otherwise, the tenant at will becomes a *tenant at sufferance*, and, as will be seen below, is not entitled to any notice to quit, but may be ejected forthwith.

A tenancy at will is also determined by the commission of waste by the tenant.—21 *Pick.* 367.

A tenant at will is not bound to make repairs, nor is he responsible for *permissive waste*. He cannot assign or underlet the premises.

In Massachusetts, “where a tenant takes an estate under a *verbal lease*, for any certain term, though he is liable to be ejected during the term, upon the landlord’s giving the notice required by statute, yet if he actually holds during that term, no notice to quit is necessary either by landlord or tenant. If the tenant holds over, he is a tenant at sufferance, and the landlord may enter and expel him without force, or have his remedy at law to regain possession. If the term is made to depend upon a contingent event, on the happening of the contingency the term is at an end by its own limitation.”—3 *Metc.* 350.

## A TENANT AT SUFFERANCE

Is one who comes into the possession of premises by lawful title, but holds over by wrong, after the determination of his interest—as where a tenant holds over without the consent of the landlord, after the expiration of his lease or the term of time for which he hired.

A tenant at sufferance is not entitled to any notice to quit, (unless the statutes of some State require it) and can be removed by the landlord at any time.

By the statutes of New York, a tenant at will and a *tenant at sufferance* are entitled to a month’s notice to quit. It has been decided, however, in that State, that where a tenant holds over after the expiration of his term, without the permission of his landlord, he is not entitled to a month’s notice to quit, he not being within the meaning of the statute a tenant at sufferance.—11 *Wend.* 616.

In Massachusetts, and in most of the other States, the common law doctrine that a tenant at sufferance is not entitled to any notice to quit, but may be removed forthwith, prevails; and if the statute of any State requires notice to be given, probably the same construction would be given to it as, we have seen, was given in New York.

In New York and New Jersey, and in some few of the other States, tenants holding over under certain circumstances, are liable to pay double rent. [See State Laws, chap. III.]

## LETTING ROOMS AND APARTMENTS.

*The letting of rooms or apartments.*—When a man lets out lodgings or apartments in a house, he impliedly leases them with all their proper accompaniments, and warrants to the hirer the use of all such accessional things as are necessary to enable him to enjoy the principal subject-matter of the demise in the manner intended. He impliedly grants to the tenant the use of the door-bell, the knocker, the sky-lights or windows of the staircase, and the use of the water-closets, unless it be otherwise stipulated at the time of the taking of the lodgings; and if the landlord deprives him of the use of either, he forthwith subjects himself to an action for a breach of contract.—(7 C. & P. 28.) He impliedly covenants or promises, moreover, to keep the roof of the house water tight, and the windows in a reasonable state of repair, so that the lodger and his effects suffer no injury from rain and exposure to the weather.

Where a person hires one or more rooms in a building, without any stipulation in the lease by lessor or lessee, for re-building in case of fire or other casualty, and the building is destroyed by fire, the tenancy is determined. It will be seen hereafter that where he hires the whole building, and covenants to pay rent, the tenancy is not determined by the destruction of the building by fire. (See page 25.)—11 Metc. 448.

If a man furnishes a dwelling house or an apartment in a house, and offer it to be let ready furnished, he impliedly holds it out as fit for immediate habitation and use; and if the furniture is unfit for use, or the house is incumbered with a nuisance of so serious a nature as to deprive the tenant of all beneficial enjoyment of it, the latter is entitled to throw up both house and furniture, and bring an action against the landlord for a breach of contract.—Thus, where the beds of a ready furnished house were so infested and overrun with bugs that they could not be slept in, it was held that the tenant was justified in leaving the house and resisting the landlord's demand for rent.—11 M. & W. 5.

## LETTING OF A STORE OR WAREHOUSE.

A contract for the letting and hiring of a store, or place of deposit in a warehouse, would seem to be a contract analogous to the letting and hiring of an apartment in a house for the occupation of a tenant or lodger. I am not aware of any decisions upon the subject of the landlord's liability to keep the roof and walls of a building tight where he has let different apartments of it for stores; but my opinion is that the landlord must keep the roof tight, and that if he fails to use reasonable diligence in this respect, he will be liable for the damage occasioned thereby. An entirely opposite doctrine prevails where the tenant hires the whole building; and as the same rule may be held by the courts to apply to the tenants of rooms, I would



advise all persons hiring rooms or stores to have covenants inserted in their leases to the effect, "*that the landlord shall keep the premises in repair, and that if they become untenable from any cause other than the wrongful act of the tenant, the tenant may leave unless the landlord, upon notice, forthwith repairs the premises,*" and also, "*that any damage occasioned by want of repairs shall be paid by the landlord.*"

## REPAIRS.

*The subject of repairs* is of much interest to both landlord and tenant. It is a fruitful source of difficulty and dissension, owing to the ignorance and misconception of the parties respecting their rights and liabilities. So much of this subject as relates to tenancies at will, and from year to year, and to the hiring of rooms or apartments, has already been considered in examining the nature of those tenancies; the subject, however, will be very fully treated hereafter, with particular reference to tenancies created by written leases, and some covenants designed to protect the tenant from all trouble and difficulty, in case at any time during the term the premises get out of repair, will be given. [See pp. 39 to 44.]

## WATER.

*The subject of water* is also another source of difficulty. The matter is fully treated in this work, and covenants are given, designed to protect the tenant against loss, provided he is compelled to buy water for use. [See pp. 44, 45.]

## WASTES—VOLUNTARY OR PERMISSIVE.

*Voluntary waste* is an act of injury done to the premises, as tearing down, defacing, or doing other injury to the house; cutting down and injuring fruit-trees, &c. *Permissive waste* consists in suffering the premises to go to decay from the want of ordinary repairs.

Alterations in a tenement become waste, as by converting two chambers into one; so cutting timber unnecessarily, or changing one species of land into another is waste.

All tenants are liable for the commission of voluntary waste. All tenants, excepting tenants at will and sufferance, are liable, to a greater or less extent, for permissive waste. The liability of tenants for permissive waste, or, in other words, the duty of tenants to make repairs, will be hereafter considered.

## MISCELLANEOUS.

An *agreement* for a lease creates a tenancy, where the tenant is let into possession under it, and pays rent for it to the lessor, unless there be something in the agreement which shows the intentions of the parties to have been clearly otherwise.

*The contract of lease* may be expressed verbally or in writing. If verbally, it has only the force and effect of a tenancy at will. If in writing, it must be subscribed by the party making it, or his authorized agent.\*

Upon the making of a lease the landlord still retains rights over the property, although he has parted with the possession; while, on the other hand, the tenant assumes certain obligations.

During the lease the house is the property of the tenant. 4 Black. Com. 222; Fost. 115.

The landlord always retains the right, as against his tenant, to go upon the premises peaceably, for the purpose of examining what waste or injury has been committed by the tenant, or other person, also to demand rent, make necessary repairs, or remove obstructions.

It is not necessary that the lessor be in possession of the premises, if he have the undisputed right to them.

If anything is left optional in a lease, and in all cases of doubt the tenant is most favored by the law, on the principle that the landlord, in granting the lease, has the power to take care of himself.

If a farm be let to a tenant without any stipulation how he is to manage it, the law implies a promise on his part, that he will cultivate and manage it in a good and husband-like manner, and according to the custom of the country. So, also, a contract will be implied, that a tenant will use a house and fixtures in a tenant-like manner.

In case an injury is done to the premises by a stranger, of such a nature as affects his reversion, the landlord may have an action against him for damages. So, if any one interferes with his tenants, and disturbs their enjoyment.

The landlord is not bound by the tenant's wrongful acts, or liable for his negligence; nor is he answerable for a nuisance erected on the premises by the tenant; but if he renews the lease, or grants another with the nuisance upon it, he becomes liable after such renewal; for he ought not to let the premises with a nuisance.

Where, under a verbal promise of a lease for years, improvements are made on the lands, and the lease is not executed, the tenant is entitled to the value of the improvements.

It is a general rule, that an *entire* contract cannot be *apportioned*:—Therefore, if a landlord accept the surrender of a tenancy in the middle of a quarter, without any new agreement as to an apportionment of the quarter's rent, he cannot recover any part of it. And so, where a tenant is evicted by his landlord from part of the premises, *let at an entire rent*, such eviction will afford a complete defence to an action for the use and occupation of those premises. Chitty, 632.

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\* In some States the Statute Law requires that the lease should be witnessed acknowledged and recorded. See page 18, and Chapter III.

# THE COMMON LAW

## RELATING TO

### LANDLORD AND TENANT.

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[The Common Law prevails in all the States, except Louisiana, and should be consulted in all cases,—in some instances, however, its principles are controlled by State Laws, which see in Chapter III.]

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#### CHAPTER I.

##### THE TENANCY HOW CREATED.

A tenancy may be created by a lease, under seal; verbally, by word of mouth; or by writing, not under seal; or by operation of law.

##### TENANCY BY AGREEMENT.

If an instrument professing to be an agreement for a lease, is in itself a transfer of possession, whether immediate or *in future*, it is a lease, though it contain a stipulation for executing a regular lease under seal. But if the words do not import immediate possession, or some act is to be done prior to the entry of the tenant, the inference will be that the instrument was not intended to be a lease, but only an executory contract.\*

By a lease the lessee acquires an interest in the demised premises immediately on its execution; and upon his entry thereon the term is fully vested in him.—7 Car. & P. 360.

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\* In writing letters in relation to making or negotiating a lease, it would be well to mention, "*that the proposal is not final*," otherwise the terms offered may be accepted, and the party find himself bound by an agreement, when he did not intend it. In whatever terms an agreement is conceived, it will be proper to restrain its operation by adding: — "And lastly, it is hereby declared, that this agreement shall not operate, or be deemed, or held to operate, as an actual or present demise of the said premises, hereby agreed to be leased, or to give the said C. D. any legal interest in the same premises until an indenture of lease shall be actually executed."

The question, whether an agreement operates as a present lease or as an executory contract; or, in other words, as a present lease, or as an agreement for a future lease, has occasioned much litigation.

By an agreement for a lease he acquires no legal interest in the term, or in the land demised.

There is no particular form required for an agreement for a lease. Any memorandum of a contract, signed by the parties, by which one agrees to let, and the other to take the premises intended to be demised, describing them shortly, and stating the rent and term, and from what time the latter shall commence, is sufficient. It is advisable, however, to insert in it, fully and explicitly, not only the terms generally of the holding, but all the covenants which are to be contained in the intended lease, that there may be no misunderstanding or dispute about them afterwards. If the agreement contain no stipulation on the subject of covenants, the tenant may object to any lease afterwards tendered to him, which contains any other than usual covenants.

A verbal agreement to grant a lease will be enforced in equity, though it may be void by statute, if there be evidence of a substantial part-performance, such as possession being delivered, or if the tenant be at expense in building or improving according to agreement, though signed by one party only.

An agreement containing no words of present yielding up, and nothing to show when the interest was to commence or determine—or containing an express stipulation that it shall not be deemed or taken to be a lease—is not a lease. But if there are words of present yielding up, without any thing to indicate that the parties contemplate a further assurance, it is a lease.

#### TENANCY BY IMPLICATION.

Where there is merely an agreement for a lease, and the intended lessee is let into possession under it, and pays rent for it to the lessor, a tenancy is impliedly created; unless there be something in the agreement, which shows the intention of the parties to have been clearly otherwise. Even where the amount of the rent was not mentioned in the agreement, but the tenant paid a certain rent, it was holden that an implied tenancy was thereby created. 3 Bing. 361. But where no rent has been paid, nor any thing done which is equivalent to it, tenancy cannot be implied. 3 B. & A. 326.

Where a tenant is in possession under a void lease, for

a term, and pays rent, a tenancy is thereby impliedly created. 8 T. R. 3.

Where a lease granted by a tenant for life, is put an end to by his death, but the remainderman afterwards receives rent from the tenant, this impliedly creates a tenancy, and the remainderman cannot put an end to it without giving a notice to quit. 7 T. R. 83.

A person in possession of land, under a contract with the owner for the purchase, is a tenant at will.—12 Mass. 325

#### TENANCY BY HOLDING OVER THE TERM.

If a landlord consents to the tenant's holding over upon the expiration of his lease, he holds on the former terms; it being understood that the parties have renewed their contract for another month, quarter, or year, as the case may be.

If a tenant holds over without the consent of the landlord, he becomes a tenant by sufferance, and the landlord may peaceably remove him and his goods, and the tenant not be entitled to resist.

If the tenant, on account of sickness, obtain the consent of the landlord to hold over until well, the landlord can demand rent only for the time he occupies.

#### JOINT TENANTS, OR TENANTS IN COMMON.

Tenants in common are where more than one person holds some estate in one piece of land, either under a landlord, or as owners of the soil. It need not be derived from the same person, nor held by the same title, nor in the same proportion. By the Ohio statute, and we presume by the law of all the states, a person has a right to demand a partition of the estate, by which his part will be set off to him.

Joint tenants, tenants in common, and coparceners, may grant leases for years or at will of their respective interests, or they may join and convey their whole interest.\*

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\* Co-tenants are equally bound to repair, or support a partition wall, fence, common well, privy, &c. If one party refuse to join, the other may, after giving him reasonable notice, do it himself, and charge his co-tenant with his proportion of the expense.

If a tree grows in a hedge dividing the land of two persons, with roots extending into the land of each, they are tenants in common of the tree: but if it stands on my side of the line, my neighbour may have a right to cut away the branches, or the roots on his side, unless of twenty years growth, but he has no right to convert either the branches or the fruit to his own use. No person has a right to build or plant anything which shall overhang another's land.

## LEASE.

[See Forms of Leases, from pages 115 to 124.]

A lease is properly a conveyance, (usually in writing, if for one year or more, and under seal,) of lands, tenements, or other things (in consideration of rent or other recompense,) made for life, or years, or at will, but always for a less time than the lessor has in the premises. Leases may endure so long as the interest of the lessor, but no longer. Two copies of the lease should be made, one of which is retained by the landlord, the other by the tenant.

The lease should be delivered by the parties, or by some authorized agent.

A covenant to renew the lease implies another lease for the same term and rent, but not with all the covenants contained in the former lease, such covenants being incidental, and not essential parts of the lease.

A covenant, to renew upon such terms as might be agreed upon, is void for uncertainty.

A lease from the first day of July of one year, to the first day of July in the succeeding year, excludes the first day. But proof of a local custom, that a lease in those terms expires at noon of the last day, is admissible.

Every lease must, either on its face, or by words of reference, give to the subject intended to be conveyed, such a description as to identify it.

If a party enters into possession without any agreement, it is understood, in some states, to be a taking from year to year; in others, as tenant at will.

If it be intended that the tenant shall pay taxes, or assessments, re-build the premises in case of fire, or keep them insured, or that he shall not underlet or assign without the landlord's consent, it should be so stated in the lease; because these things cannot be insisted upon unless bargained for.

A tenant for life can make a lease for his own life only.

Tenants in dower, or by the curtesy, are mere tenants for life, and their leases determine with their lives.

A tenant for a term of years may make an underlease of all or any part of the premises leased to him, provided his underlease be for a shorter term than his own. He must reserve to himself, however, a reversion of some portion of his term, even if it be only a day, otherwise the instrument will be an assignment.

But a tenant at will or sufferance cannot make a lease. There can be no such thing as an under-tenant to a tenant at will.

An under-tenant of real estate has a right to pursue thereon any lawful business, which is not prohibited by the lease to his lessor, nor by that to himself, and which is not injurious to the premises.

If a tenant pay to one of two landlords his share of rent justly due, the other landlord may maintain an action for his share.

Where a lessee underlets the premises for a part of the term, the original lessor cannot recover rent of the under-tenant.

#### BY WHOM LEASE MAY BE MADE.

Leases can be made by all persons legally capable of contracting, who have a present interest in the premises, and are in peaceable possession.

If there are several owners, having a common interest, they must all join in making a lease; or it may be made by their authorized agent.

An idiot or insane person cannot make a lease.\*

A person under twenty-one years of age cannot make a lease, unless it be evidently for his benefit. If not for his benefit, although not actually void on that account, it is voidable by him on coming of age, and if sued upon it, he may plead infancy; but if he make a lease rendering rent, it will bind the adult party until the minor chooses to avoid it. On the other hand, on coming of age he may confirm a lease made by him during his infancy.

A married woman cannot make a lease. The husband, having sole dominion over her property during his life, can make a lease in her right, without her joining in it; but such a lease is binding on her only during the life of her husband, for after his death, the widow, although she may have joined in the lease, may confirm or avoid it.†

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\* It has also been decided, that a lease obtained from a person in an extreme state of intoxication, is voidable by him unless he assents to it when he becomes sober.

† The Revised Statutes of New York, declare that if a wife resides out of the state, she may unite with her husband, and convey any of her real estate situated within that state.

The right of a married woman (under certain conditions, with the consent of her husband) to make conveyances, or leases of her real estate is understood to prevail generally throughout the United States. — 3 Pick. 521.

### TO WHOM THE LEASE MAY BE MADE.

All persons whatsoever, even idiots, infants, and married women, may be lessees. If they labor under any disability at the time of the making of the lease they may, upon the removal of the disability, avoid such lease; but if they continue to occupy the thing demised after the removal of the disability, the lease thereby becomes good and binding upon them. — 2 Cruise, 79, 85.

### LEASES MAY BE MADE BY POWER OF ATTORNEY.

A power of making leases for a longer term than the party would otherwise have authority by law to grant, is frequently given in settlements and wills, to those to whom an estate merely for life is thereby given, to enable them to let the lands, &c., beneficially, as well for themselves as for those who come into possession after them; but lest tenants for life should exert those powers to the injury of the persons in remainder or reversion, they are in general restrained by the words of the power from making leases, except on certain conditions. Every circumstance required by the power must be strictly followed, otherwise the lease will be void, and the power be deemed to be wholly unexecuted. The restrictions usually annexed to leasing powers relate—

1. To the instrument by which the power is to be executed.
2. To the lands to be let.
3. To the time when the lease is to commence.
4. To its duration.
5. To the rent to be reserved.
6. To the clause and covenants required to be inserted.

Executors and administrators may make a lease, if the deceased was possessed of an estate for a term of years, in the same manner as the testator, or intestate, might have done; and an executor may do this before probate. If there be two or more executors, a lease by one of them will be as valid as if it were made by all.

A mortgagor in possession cannot make a lease of the mortgaged property, so as to bind his mortgagee, unless he have authority, express or implied, from the mortgagee, to do so; but such a lease will be good as between the parties. On the other hand, the mortgagee, although in



possession, cannot make a lease so as to bind the mortgagor, if he should afterwards redeem the property.\*

When it is necessary to make a lease of mortgaged property, both mortgagor and mortgagee should join.

#### ENTRY OF LESSEE.

The lease of itself vests in the lessee no estate whatever in the demised premises — it merely gives him a right to enter upon, and take possession of them; so that, to complete the title of the lessee, he must actually enter upon the demised premises. Before entry, he is bound by his contract, and must perform all the covenants in his lease.

Where the term is to commence at some future time, the lessee cannot enter before that time. But having legally entered, he is entitled to hold the premises, not only against strangers, but also against the lessor, and all persons claiming title under him.

#### NAMES OF PARTIES TO A LEASE.

If a lease is made by an agent, or attorney, it should run in the name of the principal, and not of the agent.

#### CONSIDERATION.

Some good or valuable consideration must also appear in the lease. Natural affection is a good consideration.

#### THE DATE OF A LEASE.

The date of the instrument is not absolutely necessary, as the term will be taken to begin from the delivery of the deed, unless some particular time for its commencement is therein specified.

#### THE FORM OF SEAL.

There should be a seal of wax, wafer, or other tenacious substance, capable of being impressed, for each signature of a party to a lease, whenever a seal is required. In some of the Southern and Western States a circle or scroll of ink made with a pen will answer for a seal.

In Virginia and Alabama, there must be evidence of an intention to substitute the scroll for a seal.

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\* A mortgagor in possession, according to English law, is regarded as a tenant at will to the mortgagee, who may enter upon the mortgagor at any time even before default of payment of the mortgage money, and eject him, unless otherwise provided in the mortgage; and this doctrine, according to Chancellor Kent, prevails very extensively in the U. S. In New York the Revised Statutes have abolished the action of ejectment by a mortgagee.

## WITNESSES TO THE EXECUTION.

In executing a verbal lease no witness is necessary; but in a lease by deed, two attesting witnesses are requisite in New Hampshire, Vermont, Rhode Island, Connecticut, Ohio, Michigan, Illinois, Indiana, Delaware, Tennessee, South Carolina, and Georgia.

In New York a lease for three years or more, or for life, must be recorded; and if not acknowledged previously to its delivery, its execution and delivery shall be attested by at least one witness.

In Massachusetts, a lease for seven years or more, may be executed in the presence of at least one witness, but must be acknowledged and recorded.\*

## \* USUAL COVENANTS IN A LEASE.

[See, also, Special Covenants on pages 39 to 44, 121 and 122.]

No particular form of words is requisite to make a covenant. The words "provided" and "agreed" make a covenant. The words "covenant, grant, and agree," will operate as a lease.

The words covenant, and agreement, signify the same thing, as engagements to do, and not to do. If it is an engagement under seal, then it is technically a covenant. Covenants are of two kinds, express and implied. An express covenant is one expressed in positive words; an implied covenant is such an obligation as the law intends, incident to the nature of the contract. In New York implied covenants are abolished, and it therefore becomes necessary to mention particulars.

*The Lessee covenants to pay rent.* — In practice the lease always contains a covenant by the lessee to pay the rent. But the like covenant may be implied from the words in the reservation, "yielding and paying," &c. By this covenant, the lessee is liable for the rent during the whole of the term, even although he assigns his interest to another; if an action be brought against him for it, he cannot even plead a tender of the rent by the assignee.

*To pay or cause to be paid all taxes.* — The tenant sometimes covenants to pay all taxes, assessments and impositions whatsoever.

*To repair.* — Leases of houses or other buildings usually contain a covenant on the part of the lessee to keep the

\* It is often less difficult to prove the handwriting of the parties, than to find the witnesses, but an acknowledgment of the lease can be read in evidence.

premises in good and tenantable repair during the continuance of the term, and to leave them in the like state of repair at the end, or other sooner determination of the term. In addition to this, there is sometimes a covenant by the lessee to repair within a certain time after notice from the lessor, requiring him to do so. (See p. 39.)

*Not to commit waste.* — A covenant to this effect is often introduced into leases of farms, and sometimes into leases of houses. It is generally construed to mean such waste only as may be injurious to the reversion.

*Not to assign or underlet, &c.* — A covenant by the lessee not to assign his term to another is very usual in leases, as well of farms, as of houses. But the landlord by such assignment acquires an additional security for his rent and the performance of covenants, having the same remedies against an assignee that he would have against his lessee, and retaining still his remedies against his lessee.

A covenant restraining the *assignment* of a lease only, will not prevent an under-letting. Thus, where a tenant covenanted that he would not assign, transfer, set over, or otherwise part with the indenture, or the premises thereby leased, or any part thereof, it was held that he might, nevertheless, underlet them.—(17 John. 66; 15 Ib. 276.) If, however, he covenants not to *let* or assign over the premises, he cannot underlet.—1 M. & S. 297.

The usual covenants against assignment, &c., are only broken by the *voluntary* assignment of the premises by the lessee; where, therefore, they are sold under a judgment and execution against the lessee, there is no breach of the covenant, unless there has been fraud or collusion on the part of the lessee.—(15 John. 278.) So, an assignment under the Insolvent or Bankrupt Act, would not amount to a breach of the covenant.

The landlord may, however, protect himself against assignments by operation of law, by inserting after the usual covenant against assigning and underletting, a clause to the effect that the tenancy shall be determined upon its being taken upon an execution, or upon its passing out of the tenant's (giving his name) hands, either by his own acts or by operation of law.

The usual covenant, "not to assign or underlet," has merely the effect of subjecting the lessee to an action for

damages, if he violate it. But a condition against it would enable the lessor to re-enter and avoid the lease.

*Not to carry on a particular trade, &c.* — A very ordinary covenant on the part of the lessee, in leases of houses, is, that he shall not carry on any trade, or any particular trade specified, or allow of the same to be carried on, in the house demised, without the license of the lessor.

*To surrender at the end of the term.* — The lessee covenants, that he will on the last day of the term peaceably yield up to the lessor the premises, &c., in good tenantable repair, reasonable wearing and use thereof, and damage by fire or other casualties excepted.

*As to the management of farms.* — In leases of farms, there are usually a number of covenants upon the part of the lessee introduced, as to the manner in which the farm is to be managed, the course of cropping, the expenditure upon the farm of the manure, hay, straw, &c. made upon it, or that if hay or straw be removed, a certain quantity of manure, in proportion to it, shall be brought upon the farm, and the like. These, of course, must vary very much, in different states, according to the course of husbandry adopted in them.

*Usual covenants.* — In agreements for leases, and in powers of leasing, it is very often stipulated that the lease, when prepared, shall contain all usual and customary covenants. What are to be deemed usual covenants then becomes a question, and very often depends upon the custom or usage in that respect in the county or neighborhood where the premises are situate, often upon the nature of the property itself. What are usual covenants, is a question of fact, not of law.

The tenant usually covenants — To pay rent; to pay taxes; to allow lessor to enter and view state of premises, and that lessee will repair according to notice; that the lessee will not use premises as a shop, or for an offensive trade; or assign, or underlet, without consent of lessor; that he will leave premises in good repair, reasonable wear and tear and damage by fire and other casualties excepted; that the lessor may enter on the premises on non-payment of rent, or non-performance of covenants. — And the landlord covenants, That he will repair; that there are no incumbrances; and that on performance of the covenants,

the lessee may keep possession of the premises for the time granted.

*Implied covenants.\** — A covenant by the lessee to pay rent, may be implied from the words, “yielding and paying,” &c. — 2 Ro. Rep. 399.

*The landlord covenants to indemnify against incumbrances.* — The tenant should require of the landlord a covenant that, during the term, he shall enjoy the premises free from all incumbrances. A tenant may at any time be dispossessed of the premises by some incumbrance of which he had no knowledge.

*Rents to cease in case of fire or other casualty.* — In case the premises or any part thereof shall, during the term, be destroyed by fire, or other unavoidable casualty, the lessor shall forthwith proceed to rebuild and repair the same in as good condition as the premises were in before such fire, and in the mean time, and until said premises are rebuilt and put in good and tenantable order, the rent, or a just and proportional part thereof, shall be suspended.

*Covenant for quiet enjoyment by the Landlord.* — That the tenant, if he perform the covenants on his part to be performed, shall peaceably hold and enjoy the premises during the continuance of the term, without hindrance or interruption by the lessor, or of any other person or persons whomsoever.

*To pay taxes and assessments.* — In some leases the tenant is required to pay all the taxes and assessments; but if the lease is silent on the subject, the law imposes this obligation on the landlord.

The general rule is, that if a statute direct a tenant to pay a tax in the first instance, and then deduct it from his rent, he must deduct it from the *next* payment he makes for rent.

#### WORDS USUALLY MADE USE OF IN A LEASE.

The words usually made use of in a lease are, “*demise, lease, and to farm let,*” but any other words which are sufficient to explain the intent of the parties, that the one shall divest himself of the possession, and the other come

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\* In a deed containing express covenants, there may also be implied covenants not contradictory to those expressed. — 7 Mass. 68.

into it for a determinate time, are sufficient, whether such words run in the form of a covenant, license, or agreement; they will, in construction of law, amount to a lease. Thus, a license to enjoy or inhabit a house, has been deemed a demise of it, but no words that merely indicate an intention of the parties at some future time to let the premises, will constitute a lease; and if the instrument contain an express stipulation, that it shall not be deemed, or taken to be a lease, it is clear that it must be considered an *agreement* only. But the words used must be of *present demise*.

#### COMMENCEMENT OF THE TERM.

The time at which the term is to commence must be stated, otherwise it cannot be known when the rent is to become due. If there are no writings, the tenancy commences from the day the tenant enters into possession.

#### CONTINUANCE OF THE TERM.

The same certainty is necessary as to the extent and duration of a lease as for its commencement.\*

The continuance of the term in a lease for years must be ascertained with certainty, either by the express limitation of the parties themselves, at the time the lease is made, or by reference to some collateral act, which may, with equal certainty, measure the continuance of it, otherwise it is void.—Plowd. 271.

A lease for a certain term may be good, although it be stipulated that it shall determine at an earlier period, upon the happening of a certain event.

A lease for a certain number of years *from* a certain day, for instance, the 25th May, is not determined until the expiration of the 25th May in the last year of the tenancy, — unless there is proof of a local custom to the contrary.

It is not necessary that the continuance of the term should be stated in years; a lease for one hundred thousand days, or for a certain number of months, would be good and valid.

A lease for life is for the life either of the lessor or lessee, or of some third person.

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\* A lease for years ought to have certainty in its limitations, viz., in the commencement of the term, in the continuance of it, and in the end of it. So all these ought to be known at the commencement of the lease, and words in the lease which do not make this appear are but babble.—Plowd. 272.

If the lease does not state for whose life, it will be presumed to be for the life of the lessee.

A lease for *three, five, or seven* years, as the lessee shall think proper, is, in the first instance, a lease for *three* years; and if the lessee continue to hold after that, it is a lease for *five*; and if the lessee still continue, it is a lease for *seven*. If the lease omit to mention at whose option it may be determined, the power of deciding whether it is to be for the shorter or the longer term, is in the lessee alone.

A lease from year to year, that is to say, for a year, and so on, from year to year so long as both parties shall please, is a lease for *two years certain*, unless notice to quit be given on the day of the execution of the lease; and if it be not determined at the end of the second year, by a notice to quit previously given, it is good for the *third* year, and so from year to year, until determined by either party, by notice,\* or until some event happen which, in contemplation of law, will destroy it. — Cro. El. 775; 4 Doug. 213.

### TAXES.

All taxes and public charges must be paid by the landlord unless there is an express agreement in the lease that the tenant shall pay them.

### THE PARCELS.

A lease should describe the premises demised, with certainty, in order to avoid dispute or litigation afterward. A demise, however, of a farm, stating its name and where situate, will pass to the lessee all the land, buildings, &c. constituting the farm at the time of the making of the lease; and the number and identity of the parcels, if doubted or disputed, at any time afterwards, may be established by evidence of what constituted the farm, &c.

“Where a lease was made of certain houses, together with a piece of ground which formed part of an adjoining yard, together with all ways which the said premises, or any part thereof, theretofore used or enjoyed; and at the time of the making of the lease the whole of the yard was in the occupation of one person, who had always used and enjoyed a certain way by a gateway from the street to every part of the yard; it was holden that the lessee was entitled

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\* This is an important fact, and probably is not generally known.

to the same right of way to that part of the yard let to him." — If a lease expressly refer to the parcels in a former lease, and purport to demise the same, the lessor will be bound by it, although part of the parcels had in fact been separated from the premises between the making of the one lease and of the other. — 4 Jurist, 941.

### RESERVATION OF RENT.

Rent is a certain profit to the Landlord arising from the thing let, and not any matter that is part and parcel of it. It is not necessary that the rent should consist of money; corn, horses, &c., may be rendered by way of rent; also, labor by the lessee, his servants, cattle, &c.

The rent reserved must be certain; the amount must either be expressly stated, or be such as by reference to something else, can be certainly ascertained. — Co. Lit. 96.

Rent is usually made payable weekly, monthly, quarterly, or yearly, or it may be every two or three years, as the parties may choose to contract. If the rent is payable yearly, the lessor cannot demand it half-yearly, or quarterly. Latch, 264; Lutw. 231.

A receipt for rent due on a certain day, is strong *presumptive* evidence that all rent previously due has been regularly discharged.

If a tenant covenants to pay rent in advance, he may pay it at any time during the day on which it is made payable.

The rent must be reserved to the lessor, his heirs and assigns, or to the lessor, his executors, administrators and assigns. It cannot be reserved to a stranger. — Co. Lit. 47.

The reservation may be made in any form of words that express or imply that a return of something that was not in the lessor before is to be made instead of the thing let.

### GUARANTY FOR PAYMENT OF RENT.

A house was leased "to hold for the term of one year, the lessee paying therefor" a certain rent per annum, "and after the same rate for a shorter period of time." The lessee covenants "to pay said rent quarterly, &c., and to pay the rent as above stated, and for such further time as the lessee shall hold the same." The defendant signed the following writing on the back of the lease: "*In consideration of one dollar, I guaranty the fulfilment of the covenants of the lessee as within expressed.*"



Held, that lessee's covenants extended beyond the year, if he should occupy longer ; and defendant was bound to the same extent, and was liable for several quarters' rent after the end of the year, although not notified of non-payment, no damage being proved by want of such notice. 12 Pick. 416. (See Guarantees pages 116, 117, 119.)

#### PREMISES DESTROYED BY FIRE, OR OTHER CASUALTY.

It is a well settled rule of the common law of England, that upon an express contract to pay rent, the loss of the premises by fire, or inundation or external violence, will not exempt the party from his obligation to pay rent. The same rule prevails equally in this country, in the case of an express covenant to pay rent.\*

"The following are statutory provisions, applicable to the city of N. York, but are understood to be an enactment of the general law. Where the *whole* of a lot of land, or other premises under lease, is taken for city, or other public improvements, the lease, upon confirmation of the report of the Commissioners, becomes *void*; and if only *part* of the premises is taken, the lease becomes void as to the *part taken*, but remains *valid* as to the *residue*; and in the event of closing up a street or road on which the leased premises are situated, if they are no longer upon, or

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\* According to the principles of natural law, the law of Scotland, the Code Napoleon, and the Code of Louisiana, if the whole of the premises is destroyed by fire, or fortuitous events, or is taken for public purposes, the lease becomes void ; but where only a part is destroyed or taken, it is void as to that part. But it has been decided in New York and Massachusetts, that a lessee of premises which are burned, has no relief against an express covenant to pay rent, either at law or in equity.

In case a building is destroyed by order of a magistrate, to prevent any great public calamity, as well as in the event of a building being destroyed by a mob, the tenant is entitled to recover damages from the public treasury, not only for his interest in the building, but also for the merchandize, or other personal property belonging to him, which was in, and destroyed with, the building. This was decided in a case arising out of the great fire which occurred in New York, in December, 1835.

Where part of land is taken for public use, it is no extinguishment of the lease.

The complainant leased a store for three years, in Boston, covenanting to pay the rent, and leave the premises in good repair at the end of the term, and the lessor reserving a right to enter and make improvements. The front part of the land was taken, and the front wall of the building cut off by the city, in order to widen the street. Held, the term was not thereby ended, nor the tenant discharged from his covenants to pay rent and repair:—

That the landlord or tenant might build the wall, and the cost was a good claim for damages against the city:—

That the city was liable for damages to the tenant for the loss of the use of his store for the period necessary to remove his goods, make the repairs, and move back, and for the diminution in the value of the premises, he continuing to pay the same rent and taxes ; but not for damages by loss of custom in consequence of occupying a less favorable place of business, while the repairs were going on. — 20 Pick. 159.

contiguous to, a public highway, the lease becomes void." (See Repairs, page 39.)

### TENANCY HOW DISSOLVED.

The relation of Landlord and Tenant may be dissolved :  
 1st. By the expiration of the term of the lease. 2d. By the death of the person on whose life the lease depends. 3d. By a breach of some covenant in the lease. 4th. By keeping a house of ill-fame, or the like. 5th. Where the landlord accepts another person as tenant. 6th. Where the tenant is deprived by the landlord of the whole or a material part of the premises.\* 7th. If the landlord allows the premises to be disturbed ; or part of them used as a house of ill-fame.

It has been held that a lease of a dwelling-house, under seal, is determined by the delivery of the key and the receipt of it by the lessor, and his endeavoring to let the house.

A lease for a term of years is not determined until the last moment of the anniversary of the day from which the tenant was to hold, in the last year of the tenancy.

A tenancy at will may be determined either expressly or by implication. The mode of determining it expressly by either party is, by a demand of possession on the part of the lessor, or by an express declaration by the lessee that he will hold no longer ; which declaration should be by a notice in writing. In Massachusetts, and some other states, notice in writing is required by statute.—See Chap. III. (See Tenancy at Will, p. 6.)

A determination of the lease may be implied from any act of ownership exercised by the lessor, which is inconsistent with the nature of the estate : as if he make a lease of the lands, to commence immediately ; or enter upon the land and cut timber ; or do any other act showing that he has determined the lease—this will have the effect of putting an end to the lessee's interest, if the tenant consent.†

And on the other hand, any act of desertion by the tenant, or other act inconsistent with the estate, will operate

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\* If the tenant be deprived by the landlord of the free use of any material part of the premises, he may throw up his lease, and be no longer responsible for the rent ; or he may retain possession of the remaining part of the premises, and sue the landlord for damages. 3 Camp. R. 513.

† Where a tenancy is thus determined in the middle of a quarter, while the rent is current, the tenant is not liable (without express agreement) for a proportion of the current quarter's rent from the preceding quarter day to the day of quitting. 5 B. & C. 332.

as a determination of the estate : as, if he assign over the land to another, or commit an act of waste, his estate is thereby determined, if the landlord claim possession.

In a tenancy at will, *if either party die*, the lease is thereby determined. It is also determined by *the sale or letting by written lease of the premises*. (See p. 6.)

A tenancy at sufferance is determined by mere entry ; no demand of possession or other notice is necessary. (See p. 7.)

#### DISSOLUTION OF TENANCY BY FORFEITURE.

The right of a landlord to enter for a forfeiture of the term by the tenant, is either given by law, or it is made the matter of express stipulation in the contract.

If a lease be granted upon condition, and the condition be broken, the lessor may enter for the condition broken.

And if it be stipulated in the lease or agreement under which a tenant holds the demised premises, that if he be guilty of a breach of a particular covenant or stipulation, or generally, of any of the covenants in the lease, or stipulations in the agreement, on his part to be performed or observed, that the landlord may re-enter — if the tenant be guilty of any such breach, the landlord may accordingly re-enter, or bring his ejectment. But the stipulation in the lease or agreement, which gives this power of re-entry is generally construed very strictly.

It is a settled rule at common law, that where a right of re-entry is claimed on the ground of forfeiture for non-payment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset, on the day when the rent is due, at the place stipulated in the lease, or if there be none, then upon the most notorious place upon the land, which, if there be a dwelling-house, is at the front door.— Co. Lit. 202 1 Saund. 287.

The lessee may make a personal tender of the rent to the lessor, in order to save the forfeiture, at any time during the natural day, that is, before twelve at night, on which the rent becomes due.

Tenant's place to pay is on the land. He is not obliged to seek the landlord.—3 Kent, 468.

When rent is due, a tender upon the land is good, and prevents a forfeiture.— Co. Lit. 201—2. The tenant is not bound to go and seek the landlord, provided the con-

tract be silent as to the place of payment ; and yet a personal tender to the landlord off the land is also good.

Courts of equity are only closed against the tenant, where the forfeiture is incurred by his wilful and culpable neglect to fulfil the terms of his covenant.

#### WAIVER OF FORFEITURE.

The receipt of rent which accrued *subsequent* to the forfeiture of the lease is a waiver of the forfeiture, and will constitute a good defence to an ejectment suit brought against the lessee to enforce such forfeiture.—(9 Paige, 427.) 'The forfeiture must be known to the lessor at the time, in order to render his acceptance of rent, or any other act, a waiver.—2 D. & E. 425.

The receipt of rent does not operate as a waiver, unless the rent received accrued *subsequent* to the act which works a forfeiture.—13 Wend. 530.

If a lessor, after giving the lessee a general notice to quit, accepts rent for a time subsequent to the expiration of the notice, he thereby waives the notice, and admits the continuance of the tenancy.—6 Cush. 415.

#### DISSOLUTION OF TENANCY BY SURRENDER.

A surrender is a yielding up by mutual agreement, of an estate for life, or years, to him who has an immediate estate in reversion, or remainder, wherein the estate for life, or years, may merge ; and must be done by deed or note, in writing, signed by the party so surrendering the same, or his agent thereto lawfully authorized by writing, or by act and operation of law. A surrender in law is, where the lessee accepts a new lease of the same premises from the reversioner. The technical and proper words are, "*surrender and yield up*," but any form of words by which the intention of the parties is manifested, will be sufficient. — 4 Cruise, 93. The effect of a surrender as between the parties is, that the term granted by the lease is thereby merged and destroyed, and the lease is at an end ; but the rights of strangers are not affected by it.

The under lessee cannot surrender to the original lessor, but he must surrender to his immediate lessor or his assignee.

Tearing up a lease by mutual consent does not operate as a surrender, because the deed is not the essence of the contract, but only the evidence of it.

The express consent of all parties is necessary to create a surrender at law ; and the acts done must be unequivocal ; for if they are susceptible of an explanation at variance with the intention of surrendering the lease, they will not be considered as a surrender. The tenant's removing his goods with landlord's assent, and giving up the key, and its acceptance by the landlord, amounts to a surrender.

And where a tenant left the premises without giving notice, before his lease had expired,\* and the landlord relet the premises for a less rent, it was held, the landlord could not recover the difference from the original lessee ; but the court, in this case, intimated, that if, before reletting, the landlord had given *notice* to the original lessee, that if he did not occupy the premises himself he would let them to another tenant, on his account, he might then have recovered.—11 Moore, 380.

In one case, where the tenant had quit without notice, and the landlord had put up a bill in the window of the premises, signifying that they were to be let, it was held, that the landlord was not deprived by that act of his right to sue the original tenant for rent.—3 Esp. 225.

The mere circumstance of a landlord's having accepted rent from an assignee or undertenant in the possession of the premises, does not of itself amount to an acceptance of the assignee or undertenant as his lessee in the place of the original lessee.—1 Stark. 96.

#### NOTICE TO QUIT BY LANDLORD.

A tenancy at will, or from year to year, may lawfully be dissolved by a notice, in writing, to the tenant, requiring him to remove from the premises.

A notice to quit may be required by statute, or by local custom, or by express stipulation between the parties. In the latter case, the notice must be such as has been agreed upon ; and therefore, if it be agreed between the parties, that the tenant shall quit at a quarter's notice, of course a quarter's notice only is necessary. Where notice to quit is required by local custom, the custom will be considered as part of the contract, and must be complied with.

In absence of express stipulation, local custom, or statute law, if a tenant hold his land, or house, &c., from year to year, expressly or impliedly, either the landlord or

he may determine the tenancy by giving a half year's notice to quit. The same, where a tenancy from year to year is implied by law, or from the payment of rent, or the like. If the tenancy be from half year to half year, half a year's notice to quit must be given; if from quarter to quarter, a quarter's notice; if from month to month, a month's notice; if from week to week, a week's notice; and the expiration of the notice must be at the expiration of the half year, quarter, month or week.

But where the tenancy, by express stipulation, is to end on a certain day, then a notice to quit is not necessary. Nor is it necessary where the tenant holds under an adverse title, or has done any act that amounts to a disclaimer of his lessor's title. Nor is it necessary to be given by a mortgagee to the mortgagor, or by the mortgagee to the tenant in possession, if the tenancy were created by the mortgagor after the date of the mortgage.

Notice to quit must be given by the landlord, or by the person who may have succeeded him in the title, as heir, assignee, &c., or by his agent.\*

A mere receiver of rents appears not to have sufficient authority to give a notice to quit.—Chitty L. of C. 308.

A notice to quit given by one of two joint tenants, will have the effect of determining the tenancy as to his part, or moiety; but if it be intended to determine the tenancy as to all, if given by one, it must either be signed by all, or given expressly on the behalf of all. If given by an agent on behalf of all, it will determine the tenancy as to

\* A mistake in the notice to quit, as to the time of the expiration of the tenancy, is fatal; but in order to avoid this, the notice should require the tenant to quit at the end and expiration of the current quarter, or year, of his tenancy.

Where the tenant enters on a verbal lease, if the premises should be sold, he becomes a tenant by sufferance; and is liable to be removed without notice.

When the lease of a tenant for a certain term has expired, and he is permitted to continue in possession, he does not thereby become a yearly tenant, unless rent has been received, but is a tenant at sufferance, and may be turned out without notice.

It is not necessary that a notice to quit should be directed to the tenant in possession, if proved to have been delivered to him at the proper time. If the tenant disputes the time when his tenancy commenced, that his notice to quit does not correspond with it, it is incumbent on him to show the time of the commencement of the tenancy, not on the lessor. — 4 Esp. 7.

A misdescription of the premises, in a notice to quit, is not fatal, if they are otherwise so sufficiently designated that the party to whom notice has been given, has not been misled by it. — 4 Esp. 185.

Where a tenant, on being applied to respecting the commencement of his holding, informs the parties that it begins on a certain day, and a regular notice to quit on that day is given, he shall be bound by the information he so gave, and be not permitted to show that it began at a different time. — 2 Esp. 635.

all, although he be authorized by one of them only; and it is sufficient if his authority be subsequently recognized by them.

Notice to quit must be given to the landlord's immediate tenant, or to his executor, or other personal representative or assignee, but not to an undertenant. Where the premises were held by two tenants in common, a notice served on one of them was held to determine the entire tenancy, on the ground that it was to be presumed that notice reached the other tenant.

When the lease is to terminate at a certain time, there is no occasion for notice, for the time of termination is as well known to the tenant as to the landlord.

A tenant by sufferance, is not entitled to notice to quit; and if he holds possession unlawfully, the landlord may proceed by law to remove him.\* (See page 7.)

Where several persons are jointly interested as landlords, a notice to quit must be signed by all, or by their appointed agent or attorney.

#### NOTICE TO QUIT BY TENANT.

If notice to quit be given by the tenant, it should be given to his immediate landlord, or to the person to whom he is bound to pay his rent, or to his landlord's agent, and not to any head landlord, or person under whom his immediate landlord claims. In other respects, the same rules apply to this notice as to a notice to quit by landlord.

#### FORM AND SERVICE OF NOTICE.

A notice to quit must be in writing, and should state or describe the cause for which it was given, and fix or indicate the day when the tenant is required to quit; and be in accordance with the statutes. Care must be taken that it describe the premises correctly, and as a whole. [See Statutes of all the States, Chapter 3, and Forms of Notice at page 124.]

Duplicates are usually made of the notice, which are examined, then signed, one served, and the other kept. Serve one on the tenant personally, if you can; or, if you cannot meet with him, you may serve it upon his wife, or

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\* The landlord cannot bring an action of trespass against a tenant at sufferance, before an entry. — 17 Mass. 282.

servant, at his dwelling-house, explaining to them, at the same time, the nature of the notice. Then make a memorandum of the day and manner of service on the other copy, and keep it to prove the service of the notice. But if there be but one original notice signed, it will be sufficient; and an examined copy of it may afterwards be given in evidence, without giving the defendant notice to produce the original; as a notice to produce a notice is never required.

#### CONDITION OF PARTIES AT THE END OF A NOTICE TO QUIT, AND ON HOLDING OVER.

Where the lease, under which a tenant has holden, has expired, or has been determined by a notice to quit, the landlord thereupon immediately acquires a right of entry upon the premises, and he may peaceably enter upon them; and may then maintain trespass against the tenant who still remains in possession, but he cannot turn the tenant or his family out of possession, except by legal process.

But, if the tenant refuse to quit the premises, the landlord must have recourse to the law, and obtain possession at the hands of a public officer.\*

If the landlord neglect to commence proceedings to eject the tenant at the termination of the notice, for a certain length of time, or again receive rent, he must renew the notice, for the expiration of a notice is equivalent to the expiration of a lease, after which time a new tenancy will be held to have commenced.

A landlord, having the reversion in a house, may enter it, after the determination of his tenant's tenancy by a notice to quit or otherwise, either peaceably, or, if no person be in the house at the time, even by breaking open the door, and retain possession against the tenant, as against a stranger. So, where a tenancy from week to week was determined by a notice to quit, but the tenant omitted to give up possession, and had some furniture still in the house; the landlord, at a time when there was no person in the house, broke open the door with a crowbar, and other forcible application, and resumed the possession, whereupon the tenant brought trespass: the court held

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\* For method of proceeding, see Statutes, Chapter III.



that the landlord had a right thus to enter, *Dallas, C. J.* saying that the case of *Taunton v. Costar* established that he might enter peaceably, and that there was no necessity for an ejectment in such a case, and his using force, when there was no person upon the premises, made no difference; and *Park, J.* remarked that the declaration alleged it to be the house of the plaintiff, when in fact and in law it was the house of the landlord. — 1 Bing. 158. But if any person be upon the premises, and force be used sufficient to constitute it a forcible entry, this will confer no right upon the landlord for so entering. In all other cases, however, after the landlord thus enters, he may maintain trespass against third parties, and even against the tenant himself, if he continue also to hold possession. He cannot however forcibly turn the tenant or his family out of possession; that can be done by ejectment only.

So, a landlord may lawfully enter upon the demised premises, if he have a right of entry for any other cause.

But if a landlord, not having any right of entry, enter upon the demised premises during the term, he is just as much liable to an action of trespass at the suit of his tenant, as any other stranger would be.

If the landlord make a violent and forcible entry into the premises, after the tenant's term has expired, and remove the tenant's goods, the tenant cannot maintain an action of trespass against him; though the landlord may be indicted for a breach of the peace. — So, on the other hand, if the tenant keep possession of the premises by force, having in the house unusual weapons, and threatening violence to the former possessor, should he return, he is guilty of a forcible detainer.

#### WHEN NOTICE TO QUIT BY TENANT IS UNNECESSARY.

If the landlord, by any misconduct on his part, render the occupation of the tenant so uncomfortable, that he is obliged to quit the premises; or do any act which amounts to an assent, on his part, that the tenancy shall end; or accept another person for tenant; or, in the middle of a quarter, accept the key of the premises from the tenant, under an agreement that upon his giving up possession the rent should cease, — notice is unnecessary.

But in a case where the tenant had quitted the premises before the year was out, and neglected to give his landlord

notice, and the landlord put up a bill in the window, and endeavored to let the house; it was held that such an act on the part of the landlord was only for the benefit of the tenant, and no evidence that the landlord consented that the tenancy should be put an end to.

In Massachusetts, Connecticut, and Pennsylvania, neither the mortgagor, nor the tenant of the mortgagor, under a lease commencing after the delivery and recording of a mortgage deed, is entitled to notice, either from the mortgagee or his assignee. In New York he is.

(See page 6, as to when a notice to quit is not necessary to be given a tenant at will.)

### TENANT'S RIGHT OF EGRESS AND REGRESS.

After the tenant has quit possession, and his tenancy is ended, he may enter upon the premises, in order to remove his goods and chattels. But he can then only take away such articles of personal property as are detached from the freehold; for such fixtures as the law permits the tenant to remove must be removed before the expiration of the tenancy.\*

### EMBLEMENTS.

Emblements mean crops of corn, or other produce, which ordinarily repay the tenant for his labor within a year after they are sown, although in extraordinary seasons they may possibly be delayed beyond that period.

The general rule as to the right to emblements is this, — if the term for which a tenant holds, be uncertain or contingent, so that at the time he sows his crop, he cannot know that his tenancy will not continue until he shall have reaped it, then he shall be entitled to the crop as emblements. But if his term be certain, and not depending upon any contingency, and at the time he sows his crop

\* Any person is liable to an action of trespass if he enter upon premises previously occupied by him, (but whose lease has expired,) for the purpose of removing his goods and chattels, as his property in them does not give him the right to enter upon the premises. Still he has a legal title to such goods and chattels, and also to such fixtures put up by himself, as were detached from the freehold before his term expired; and if the landlord will not permit him to enter and take them, he may sue the landlord, in trover, after demand, and also he may have a writ of replevin. Yet the landlord, in an action of trespass, would probably recover only nominal damages if the tenant should peaceably enter within a reasonable time after the determination of the lease, for the purpose of removing his goods.

It is held that if the injury is not, in legal contemplation, forcible, or not direct and immediate, but only consequential, the remedy is by action on the case.

he knows that his term will not continue until he shall have reaped it, then he will not be entitled to the crop as emblements; he may be entitled to it as an offgoing crop, or to the value of it, by express stipulation with his landlord, or by the local custom of the country, but not as emblements.\*

Where the determination of an estate for years is certain, as where lands are let for two years, or the like, the tenant is not entitled to emblements; for it was his own folly to sow, when he knew he could not reap.

Where an estate at will is determined by the lessor, the tenant is entitled to the corn sown and other emblements; but it is otherwise, if the tenant determine the tenancy.

If a husband, seized in right of his wife, sow the land, and die, his executors shall have the emblements.

If there be a clause of re-entry in a lease for non-performance of covenants, and the lessee, after sowing the land and before severance, does or omits to do some act, which is a breach of one of the covenants, he is not entitled to emblements; for he himself, by his act or neglect, has put an end to the term.

If by express agreement between the lessor and lessee, the latter is to have the emblements at the end of the term, he shall have them, whether he would otherwise be entitled to them or not.

#### RIGHTS AND LIABILITIES OF OUTGOING TENANTS.

As soon as the tenancy has expired, the tenant is bound peaceably and quietly, to deliver up to his landlord the possession of the premises, together with all such buildings and fixtures as belong to them.

Either the express stipulation between the parties, or the custom of the country upon the subject, must determine the tenant's rights; if there be neither, the crops which are in the ground, or not severed at the end of the term, belong to the landlord, unless the right to enter and secure grain, after the expiration of the term, is so expressed in the lease.

*All the straw, hay, manure, corn, severed — dead and live stock — every personal chattel upon the farm at the*

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\* If a tenant is entitled to emblements after the determination of his term, he may maintain trespass against his landlord for forcibly preventing his taking them away. — 9 Johns. R. 108.

expiration of the tenancy, belongs to the tenant, and may be removed by him, unless there be some custom of the country, or some express stipulation between him and his landlord, to the contrary.\*

### LANDLORD'S FIXTURES.

All things fixed to the freehold at the commencement of the tenancy belong, without exception, to the landlord.

So all things fixed to the freehold by the landlord during the tenancy.

So all things fixed to the freehold, which have been affixed by the tenant during the term, become thereby the property of the landlord, if they be not what are termed tenant's fixtures, or trade fixtures.

So, all things fixed to the freehold, which remain so fixed at the expiration of the term, or sooner determination of the tenancy, become the property of the landlord, whether they be landlord's fixtures, or tenant's fixtures, or trade fixtures, unless the tenant remove them either before the determination of the tenancy, or before such farther time as the tenant is allowed to retain possession, under circumstances which warrant him in considering himself still as tenant. — 1 Salk. 368.

So, if the tenancy be determined by forfeiture, all such things become the property of the landlord.

### TENANT'S OR DOMESTIC FIXTURES.

*Domestic fixtures* include all such articles as a tenant fixes to a dwelling-house in order to render its occupation more comfortable and convenient, and may be separated from it without doing substantial injury — such as grates, beds nailed to the wall, cooking ranges, marble chimney-pieces; or other fixtures which are merely attached to the walls with screws, he can take away before the end of the

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\* If an outgoing tenant at will, or for years, remove or sell manure made in the ordinary course of husbandry, no property is vested in the purchase, and trespass will lie against him by the landlord.

An outgoing tenant in *agriculture* is not entitled to the manure made on the farm during his tenancy, even though lying in heaps in the farm yard, and though it were made by his own cattle, and from his own fodder — 6 Greenl. 222. 15 Wend. 169.

When land is sold and conveyed, manure lying about a barn, upon the land, will pass to the grantee, as incident to the land, unless there be a reservation of it in the deed. 3 N. Hamp. Rep. 503.

term.\* But things which he affixes to the house in order to complete it, such as hearth-stones, doors and windows, press-locks and keys, he cannot take away.

So also all substantial additions made to the house, become part of the freehold.

Things of mere ornament, such as hangings, curtains, chimney-glasses, pier-glasses, and the like, which are merely fastened up to keep them in their places, are not deemed to be fixed to the freehold; the lessee is entitled to them at all times before or after the expiration of the term, and they never vest in the lessor. But he can then only take such goods as are detached from the freehold. The general rule on the subject, is, *That all fixtures fixed by the tenant to the freehold during his term, and that can be removed without doing substantial injury to the premises, may be removed by the tenant at any time during his term, the premises being left in the same condition as before affixation.*†

Tenant's fixtures must be removed before the tenant leaves the premises, or they become part of the freehold.

#### TRADE FIXTURES.

All things fixed by the tenant to the freehold, for the purposes of trade, such as baker's ovens, furnaces, a steam-engine, counters, shelves, benches, machines, cider-mills, presses, stoves, grates, gas-pipes, glass fronts, partitions, iron safes, drawers, padlocks, &c., &c., belong to the tenant, and may be removed by him, unless there is an express contract to the contrary, between the parties.

The lessee may remove furnaces, coppers, or other utensils of trade, though fixed to the freehold during his term; but if they remain fixed after the end of the term, he shall not remove them. ‡

This doctrine has been fully considered in the Supreme Court of the United States, where Judge Story held that

\* The fire-frame, fixed in a common fire-place, with brick between its sides and the jambs, is a fixture; and a tenant who has placed it there, cannot remove it after the expiration of his term, and after leaving the premises, though he may before. — 17 Pick. 192.

† A tenant for life, years, or at will, may remove all such improvements from the freehold as he has placed there, the removal of which will not injure the premises, or render them in worse plight than when he entered. — 4 Pick. 310.

‡ Looms in a woolen factory, which could be removed without injury to themselves or the building, are chattels, and are liable to be taken by the creditors though mortgaged with the factory, — unless filed or recorded as chattels. — N. York Dec.

the question whether a given article is capable of removal does not depend upon the form or size of the building, whether it has a brick foundation, is one or more stories high, or has a chimney; that the only question is, *whether it is designed for the purposes of trade.*\*

### FARM FIXTURES.

A tenant of a farm is not entitled to the exemption for his farm fixtures, or those things which he may have fixed to the freehold for agricultural purposes, which a tenant in trade enjoys with respect to things so fixed for the purposes of his trade.† Barns, mills, greenhouses, and other buildings, standing upon brick or stone, but capable of being moved without difficulty, are not fixtures, and may be removed by the tenant.

Gardeners and nurserymen may remove trees, flowers, &c., planted by them with an express view to sale, and are entitled to them both before and after the expiration of the term. But in England it has been holden, that a tenant, not a gardener by trade, cannot do so; that he could not even remove a border of box, which had been planted by himself.

### HEIR OR EXECUTOR'S RIGHT TO FIXTURES.

The general rule is, that he who is entitled to the land

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\* In an action of Covenant, where the defendant covenanted to leave all the buildings which then were, or should be erected, on the premises during the term, Lord Kenyon remarked, that if a tenant build upon premises demised to him, a substantial addition to the house, or add to its magnificence, he must leave his additions at the expiration of his term, for the benefit of his landlord; but the law will make the most favorable construction for the tenant, where he has made necessary and useful erections for his trade or manufacture, and which enable him to carry it on with more advantage. It has been so held in the case of cidermills, and in other cases; and I shall not narrow the law, but hold erections of this sort, (two Dutch barns) made for the benefit of trade, or constructed as the present, to be removed at the end of the term.

“Gibbs contended, that by the express words of the covenant the tenant was to leave all erections made on the premises, at the end of the term.”

“Lord Kenyon—I am aware of that, and am not sure that it concludes the question. It means that the tenant shall leave all those buildings which are annexed to and become part of the reversionary estate.”—3 Esp. 12.

Fixtures erected by tenant for carrying on his trade are personal property.

† Lord Kenyon said, that the old cases leaned to consider as realty, whatever was annexed to the freehold by the occupier; but in modern times the leaning has always been the other way, in favor of the tenant in support of the interests of trade. He asked, what tenant will lay out money in costly improvements in the erection of green-houses, and hot-houses, if he be obliged to leave them on the premises?—2 East. 90.

A tenant may take and carry away any buildings erected by him on the land, which are not so fixed to the freehold, or connected with the soil, that they cannot be removed without prejudice—8 Mass. 411.

is entitled to everything fixed to it. Where a person dies, possessed of a term for years in land, everything fixed to the land, as well as the term itself, go to his executors or administrator. If he die seized of an estate in fee, the land and everything fixed to it goes to the heir.

If a trade be carried on upon the land, then everything erected for the purposes of the trade goes to the executor; the land itself to the heir. — H. Bl. 259.

In case of executions against the tenant, the sheriff may seize, remove, and sell all fixtures the tenant himself might remove during his term; but the sheriff cannot seize them after the tenancy is at an end, and the landlord has obtained possession. So, if they have been mortgaged by the tenant they cannot be taken in execution for his debt.

A landlord cannot distrain fixtures for rent; not even those the tenant would be entitled to remove. — 12 B. 895. 10 Law. J. 294.

#### REPAIRS, BY WHOM TO BE MADE WHEN LETTING IS BY WRITTEN LEASE.

The subject of repairs is one that gives rise to more disputes between landlord and tenant than any other, from the fact that there is no other subject respecting which both landlord and tenant are so ignorant.

The landlord is in no case bound to repair the premises, unless he has agreed to. And if the premises be out of repair, the tenant cannot make repairs at the expense of the landlord, or deduct the amount of them out of the rent, unless there is a special agreement to that effect between the tenant and the landlord.—6 Cowen, 475.

Having put the tenant into possession of the demised premises, or placed them at his disposal, and clothed him with the legal title to the possession and occupation thereof for the term granted by the lease, the lessor has done all that it is necessary for him to do to entitle himself to the rent at the time that it is made due and payable; there is no implied warranty on his part that the premises are, at the time of the demise, or that they shall continue to be, during the term, in any particular state or condition, or fit for any particular purpose; and the tenant therefore is bound to pay his rent, although the premises are not fit for the purpose for which he required

them, and although he may have had no beneficial use or enjoyment thereof.—7 Meson & Welsby, 577.

If, indeed, the landlord has been guilty of any fraudulent concealment of defects which ought in good faith to have been disclosed, or has resorted to any misrepresentation calculated to mislead the tenant in some important particular as to the state and condition of the leased premises, the contract would be void, and the tenant would be discharged from the rent; but in the absence of all fraud and deceit, he is bound by his express covenant or contract, and must pay his rent, although he has not had that beneficial use and enjoyment of the demised premises which was anticipated.

This is a most important fact to be borne in mind by the lessee in hiring premises. It is pretty generally believed that a landlord, in letting a house, impliedly covenants that it is in a fit and proper state for habitation; and this opinion would seem to have received the sanction of the courts of England in several cases; but in a recent case in that country, where the whole law upon this subject was very carefully examined, and the question very ably discussed, the court decided that in cases of leases of *unfurnished* houses, there was no implied warranty or engagement on the part of the landlord, that the house was at the time of the letting, or should be at the commencement of the term, in a fit and proper state and condition for habitation.—12 M. & W., 68.

The above case refers to the letting of unfurnished houses; it would seem, however, that a man who lets a ready-furnished house does so under the implied condition or obligation that the house is in a fit state to be inhabited; and in one case where it was not, the house being greatly infested with bugs, it was held the tenant might quit without notice.—11 M. & W., 5.

It would be well, therefore, for tenants to have inserted in their leases a covenant "that the premises are in good tenantable condition, and especially that the outbuildings, privy, &c., are in good repair." As, however, the tenant usually examines the premises pretty carefully before hiring, few cases of difficulty occur from the absence of such a covenant.

The tenant, in hiring, should always remember that *there is no implied covenant on the part of the landlord*



*as to the condition in which the premises shall continue during the term*; if, therefore, the premises become uninhabitable during the term from any cause other than the fault of the landlord, the tenant is nevertheless bound to pay the rent. In a recent case, it appeared that the building had become uninhabitable by reason of the buildings settling, causing large gaps in the wall, and that the only means by which it could be repaired was by shoring up and underpinning the house, pulling down the front wall and rebuilding it, laying an entirely new foundation, and making a sewer to carry off the water; and that the mischief was not to be ascribed to the want of ordinary repairs, or to any injury, but simply to the original badness of the foundation, which consisted of soft brick, and to the marshy nature of the soil. It was held that the landlord was under no implied obligation to repair in such a case, and that the tenant could not quit, but must pay his rent.—10 M. & W., 321.

The cases in which the tenant has been allowed to withdraw himself from the tenancy, and to refuse the payment of rent, are cases where there has been either error or fraudulent misdescription of the premises, or where the premises have been found to be uninhabitable by the wrongful act or default of the landlord.—Ibid.

This will be further considered under the head “Express Covenants and Agreements to Repair,” where some covenants, designed to protect the tenant from the payment of rent in case the building becomes untenable, will be given. (See p. 43.)

#### IMPLIED COVENANTS ON THE PART OF THE LESSEE TO REPAIR.

In the absence of an express covenant or agreement to repair, the lessee is not bound to rebuild a house leased to him, which has been burnt by an accidental fire, or consumed through the negligence and folly of his own servants.—10 Bing., 385.

But there results from the leasing, and acceptance of the lease by the lessee, an implied covenant or promise to use the property leased *in a tenant-like and proper manner; to take reasonable care of it, and restore it*, at the expiration of the term for which it is hired, in the same *state and condition* as it was in when leased, subject only

to the *deterioration produced by ordinary wear and tear, and the reasonable use of it for the purpose for which it was known to be required.*—(12 M. & W., 827.) In fulfilment of this implied covenant or promise, the lessee is bound to keep the premises wind and water tight, and in a habitable state, if they were in good repair and condition at the time of the demise. He must cleanse the drains and sewers, and amend all trifling external injuries to the buildings, which, if neglected and left unrepaired, would operate to the serious and lasting injury of the estate.—(3 Ad. & E., N. S., 449.) He must not suffer the roof to remain uncovered, so as to let the timbers rot. If windows are broken by the wind and hail, or tiles are blown off, or accidentally broken, he is liable for the non-repair of them, if the consequences of his neglect would be damage to the building from rain.—7 M. & W. 348; 12 M. & W., 827.

But the tenant is not bound to make substantial and lasting repairs, such as new roofing; *nor is he responsible for ordinary wear and tear, deterioration from age, or inevitable accident*; and the extent of his liability depends upon the age and general state and condition of the demised premises at the time he took possession of them, and the duration and value of his own term and interest in the property. A tenant from year to year, for example, whose estate may be determined by the landlord, as we have seen, by a six months' notice to quit, ending with the current year of hiring, would never be expected to go to the same amount of expense for the repair and preservation of the property, as a tenant for a term of years.

The tenant of farms, orchards, gardens, and lands for tillage and cultivation, likewise impliedly covenants or promises, to use and cultivate the land, and manure the soil, according to the custom of the country, and the prevalent course of good husbandry in the district where the land is situate; and to take all reasonable care of the garden and orchard.

The tenant is moreover bound to keep the fences and ditches, sea walls and boundaries, in good order, and in reasonable state of repair; the extent of his liability in this respect must materially depend upon the duration of his lease.—4 T. R. 318.

## EXPRESS COVENANTS AND AGREEMENTS TO REPAIR.

When the tenant has entered into an express covenant or agreement to "repair, uphold, and keep in repair" a house, or any other structure or building demised to him, he is bound to rebuild or reconstruct it if it be burnt by an accidental fire, or be blown down by tempest, or destroyed by floods, or by an inevitable accident.—(2 Saund., 421, a.) The printed forms of leases in most common use contain a clause "excepting injuries by fire and other casualties;" and lessees should be careful to see that this clause is not omitted.

In covenants by the tenant to "repair and leave the premises in the same state as he found them," he is to take care that the tenements do not suffer more than the natural operation of time and nature would effect. He is only bound to keep up an old house as an old house; to use his best endeavors to keep the premises in the same tenantable repair in which he found them, for *natural and unavoidable decay* does not amount to a breach of the covenant. These are the covenants usually found in the leases most in use.

It has been seen that if the premises become uninhabitable during the term, the tenant, in the absence of any express agreement, is nevertheless liable to pay the rent. Instead, therefore, of the usual covenants on the part of the tenant, "to repair, and leave the premises in the same state as he found them," I would advise a tenant to have inserted in the lease a covenant "that he will commit no *voluntary* waste; and that if, at any time during the term, the premises become untenable from any cause other than the wrongful acts of the tenant, and the landlord does not, upon notice of the fact, forthwith (or in a reasonable time) put the premises in tenantable condition, then the tenant may leave, and the tenancy shall thereupon be determined." A further condition might be inserted to the effect, "that if the landlord, upon notice, makes the necessary repairs, and in so doing the tenant is deprived of the beneficial enjoyment of the premises, or suffers any injury in the occupation thereof while such repairs are being made, then a reasonable deduction shall be made from the rent."

If it is the intention of the parties that the tenant shall

make such slight repairs as from time to time, in the ordinary course of things, may become necessary, then, after the covenant against voluntary waste, a condition might be inserted "that if the premises at any time during the term should become untenable from any cause other than the wrongful acts of the tenant, and the repairs necessary to render the premises tenantable shall exceed the sum of —— dollars, and the landlord does not, upon notice of the fact, forthwith (or in a reasonable time) put the premises in tenantable condition, then the tenant may leave, and the tenancy shall thereupon be determined."

The usual covenants may be suffered to remain, and additional covenants inserted, to the effect, "that the landlord shall keep the roof and outside walls of the house tight, or shall keep the house in good repair, and shall paint the outside walls once in a certain number of years," and shall paint the inside, or paper the rooms, &c. &c.

Covenants ought also to be inserted to the effect, "that if the outbuildings, privy, &c., get out of repair, so as to be unfit for use, or, so as to become a nuisance, from any cause other than the wrongful acts of the tenant, and the landlord does not, upon notice, repair the same within a reasonable time, then the tenant may repair the same, and deduct the expense thereof from his rent." Covenants to this effect are seldom, if ever, found in the printed forms of leases, and the tenant is, in the absence of any agreement, sometimes put to considerable expense to repair privies, the vaults of which have burst either from age or improper construction.

Especial care should be taken in hiring buildings erected on newly-made land, or having flat, composition roofs, to have covenants inserted in the lease protecting the tenant from all liability in case the premises become untenable.

#### COVENANTS RESPECTING WATER.

The subject of *Water* is another source of difficulty between landlords and tenants. The pumps get out of order, the well wants cleaning, or the water fails, or the supply is cut off, &c. &c., and the tenant is obliged to buy water. The opinion seems to be entertained by many persons, that the expense thus incurred in purchasing water is to be borne by the landlord, and some

suppose the failure of water to be a sufficient cause for vacating the premises, unless the landlord assumes the expense of procuring it elsewhere. In one case (and I can find but one upon the subject) where the pump got out of order, the court held that the landlord, in the absence of any express agreement, was not bound to keep the pump in repair. And upon general principles, it would seem that the landlord is under no implied obligation to keep the water fixtures, or well in repair, or clean, and that it is no cause for an abatement of the rent, or for the tenant's leaving, that the water becomes impure or fails, unless such impurity or failure be occasioned by the fault of the landlord.

If, therefore, it is the understanding that the tenant is to have a good supply of water, he should be careful to have a covenant inserted in the lease to the effect, "that if at any time the water fixtures (a pump) get out of repair, or the water becomes impure, from any other cause than the wrongful acts of the tenant, the landlord shall, upon notice thereof, cause the necessary repairs and cleansing to be made in a reasonable time; and that if the tenant is obliged to buy water on account of the water fixtures being out of repair, or of the failure or impurity of the water, the expense thus incurred, the tenant having given the landlord reasonable notice of the fact, shall be deducted from the rent," provided, however, "that if the landlord, upon notice, offers to furnish the tenant with a good and sufficient supply of good water, the tenant shall not purchase it elsewhere at the expense of the landlord."

### WASTE.

Waste is a spoil or destruction in houses, flower gardens, fences, trees, &c., of an estate, to the injury of him who has the remainder or reversion.

It is either voluntary or permissive. Voluntary, as when a tenant destroys a house, garden, trees, &c. — permissive, when he neglects to do what might have prevented the waste, as by suffering the house to fall for want of necessary repairs.

The omission of a tenant to keep the premises in what is called tenantable repair, subjects him to an action for waste. The natural and unavoidable decay of buildings, is always allowed for.

So, if the lessee suffer glass windows to become broken, or carried away; or if he pull down or remove any part of the house, as the windows, doors, or other fixtures, he is guilty of waste.

Whatever does a lasting damage to the freehold, is waste. If the lessee alter the house to the lessor's prejudice—as if he turn a parlor into a stable, or turn two rooms into one; or pull down, remove or alter, any part of the house let, or fixed to the tenancy by the landlord at the commencement or during the tenancy, even if it improve its value and increase the rent, it is waste.\*

A tenant has no right to dig up and use soil or wood on the demised premises, with a view to the manufacture of bricks for sale; and if he do so, the landlord is entitled to an injunction restraining him. If he dig up the surface of the land, it is waste; unless it be to dig trenches to carry off the water, or to cut turf for actual use.

If a lessee cut down, destroy, or carry away any trees growing for timber, (unless cut down for the repair of things useful on the estate,) ornament, fruit, or shade, or do any act to cause them to decay, or carry away any wood or underwood standing or lying on the land; or dig up or carry away any stone, ore, or other valuable thing found thereon, he is guilty of waste. The court in 4 Watts, 463, remarking upon the distinction between the state of things in England, where "every part of a tree will bring cash," and in this country, said, that if in the United States the clearing of the land should raise its value, it is no waste.

If the lessee suffer the sea to surround arable land, meadow, or pasture, it is waste, if it happen by his default. 2 Rol. 816, l. 40. So, if he suffer a wall or bank against the sea, or river, &c., to be ruinous, whereby the waters enter, and render the meadows useless. — Co. Lit. 53.

#### ASSIGNMENT.

[See Form of Assignment, p. 124.]

An assignment is a transfer or making over to another, of a right one has in an estate. It differs from a lease in

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\* Where an action arises for a wrong done under a covenant (waste committed under a lease for instance,) then a verbal discharge is a plea against any future demand for damages, for it does not affect the covenant.

If one joint tenant, or tenant in common, commit waste, he is subject to an action of waste at the suit of a co-tenant.

Waste, committed by a tenant at will, terminates his tenancy, and renders him liable to an action of trespass by the landlord.

this, that by a lease, the lessor grants an interest less than his own, reserving to himself a reversion ; by assignment, he parts with the whole property. — 3 Bl. Com. 326, 327.

If a man convey the whole of his interest by deed, it is an assignment, not a lease, although by the deed he reserve rent to himself, and the deed contain covenants which were not in the original lease or conveyance to him. — 1 Doug. 187.

The relation of landlord and tenant may be created, either by the lessor assigning his reversion to another, in which case the assignee immediately becomes the landlord of the lessee — or by the lessee assigning his term to another, in which case the assignee of the term becomes the tenant of the lessor — or by both parties respectively assigning their interests to others, in which case the assignee of the reversion immediately becomes the landlord, and the assignee of the term the tenant.

The usual covenants, on the part of the assignor are, that the indenture of lease is good in law ; that he has power to assign ; to save the assignee harmless from former grants and incumbrances, and for quiet enjoyment. On the part of the assignee, that he will pay rent, or perform the services and covenants mentioned in the lease, or save the assignor harmless therefrom.\*

An assignee must take the thing assigned, subject to all the equity to which the original party is subject, and must, therefore, perform all the covenants which are annexed to the estate.

An assignee is not liable for a breach of a covenant made before the assignment to him.

The assignee may discharge himself by a *bona fide* assignment to any one, except from covenants running with the land, and broken during his enjoyment. An assignee is not liable unless he accepts the assignment.

#### ASSIGNEE OF THE REVERSION.

If the lessor assign his reversion, the assignee may have an action of debt for rent. — 5 B. & C. 512.

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\* The lessee is always liable upon his covenants, during the term, although he may have assigned it to another ; he cannot even plead a tender of the rent by the assignee. 4 Taunt. 642. And the lessor's having accepted the assignee as his tenant, by receiving rent from him, makes no difference in this respect. It is no defence whatever in covenant, although it would be a defence in debt for the rent, if the acceptance be pleaded and proved, but not otherwise. In no case can the landlord maintain his action against a mere under lessee. Doug. 183.

## ASSIGNEE OF THE TERM.

If the lessee assign his term, the assignee may have an action of covenant against the lessor, or his assignee for breach of any covenant running with the land; and the lessor may have debt for rent against the lessee, if he have not accepted the assignee of the term as his tenant. — 1 Salk. 80, 81.

## BANKRUPTCY OF TENANT.

In case of the bankruptcy of the tenant, his assignees will be entitled to all those fixtures that the bankrupt might by law remove during his tenancy.

## LANDLORD'S REMEDY BY ACTION OF DEBT, COVENANT, AND WASTE.

Rent is recoverable by action of debt, whether payable in money, or in produce of land. In the latter case the value of the produce may be recovered in money, if not paid in kind, at the price it is worth when due. Interest may be recovered from the time the rent becomes due.

The landlord may recover, in case of any breach of Covenant contained in the lease, by an action of covenant, and may recover Rent and Damages, if he have sustained any, in consequence of his tenant's breach of his covenants as to Insuring, Repairing, Assigning, Underletting, Carrying on Offensive Trade, &c.

If waste has been committed, an action of Waste lies against the tenant to recover the place as wasted, and in some States *double*, and in others, *treble* damages. An action of waste is brought by him who has a reversion in the premises, after the termination of the tenancy, unless the tenant do an act which is injurious to the reversion, when the landlord may bring an action for damages during the term. But the action of waste, however, is seldom resorted to in practice, at present, as modern leases have usually a clause in them, giving the landlord a power of entry in case the tenant commit waste, and the landlord hereupon recovers the premises in an ejectment.\*

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\* Mode of Ejectment, see pages 31, 32, and State Laws, Chap. III.



## FORCIBLE ENTRY AND DETAINER.

A forcible entry must regularly be with a strong hand, with unusual weapons, or with menace of life or limb; it must be accompanied with some circumstances of actual violence or terror; and an entry which has no other force than such as is implied by the law in every trespass, is not within these statutes. [3 Bac. Abr. Forcible Entry, &c., *De.*; Dalt. 300; 1 Hawk. P. C., ch. 64, sec. 25.] An entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession; but also in respect of any other kind of violence, in the manner of the entry, as by breaking open the doors of a house, whether any person be in it at the time or not, especially if it be a dwelling house, and perhaps also by an act of outrage after the entry, as by carrying away the party's goods, &c.—1 Hawk. P. C., chap. 64, sec. 26.

If one find a man out of his house, and forcibly withhold him from returning to it, and send persons to take peaceable possession of it in the party's absence, this, according to the better opinion, is a forcible entry. [1 Hawk. P. C., ch. 64, sec. 26.] And there may be a forcible entry where a person's wife, children, or servants, are upon the lands to preserve the possession; because, whatever a man does by his agents is his own act. 3 Bac. Abr., Forcible Entry, &c., *B.* Whenever a man, either by his behavior or speech, at the time of his entry, gives those who are in possession of the tenements which he claims just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible; whether he cause such a terror by carrying with him an unusual number of servants, or by arming himself in such a manner as plainly intimates a design to back his pretensions by force, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force against those who shall make any resistance. [1 Hawk. P. C. 64, sec. 27; Eng. Com. L. Rep. xii. 5.]

Drawing a latch and entering a house seem not to be a forcible entry according to the better opinion, [3 Bac. Abr. Forcible Entry, &c. *B.* 1 Hawk. P. C. chap. 64, sec. 26.] So if a man open the door with a key, or enter by an open window; or if the entry be without the semblance of force as by coming in peaceably, enticing the owner out of possession, and afterwards excluding him by shutting the door, without other force, these will not be forcible entries.—4 Com. Dig. Forcible Entry, &c. [A. 3.]

All who accompany a man when he makes a forcible entry will be deemed to enter with him, whether they actually come upon the lands or not. [1 Hawk. P. C. chap. 64, sec. 22.] So if several come in company where their entry is not lawful, and all of them, except one, enter in a peaceable manner, and that one, only, use force, it is a forcible entry in them all, because they come in company to do an unlawful act. [3 Bac. Abr. Forcible Entry, &c. *B.*] But he who barely agrees to a forcible entry made to his use, without his knowledge or priority, is not within the statutes, because he did not concur in, or promote the force.—1 Hawk. P. C. chap. 64, sec. 24.

Forcible *detainer* is where a man who enters peaceably, afterwards detains his possession by force; and the same circumstances of violence or terror which will make an entry forcible, will also make a detainer forcible. From whence it seems to follow that whoever keeps in his house an unusual number of people, or unusual weapons, or threatens to do some bodily hurt to the former possessor, if he dare return, is guilty of a forcible detainer, though no attempt be made to re-enter; and it has been said that he also will come under the like construction who places men at a distance from the house in order to assault any one who shall attempt to make an entry into it; and that he is in like manner guilty who shuts his doors against a justice of the peace coming to view the force, and obstinately refuses to let him come in. [1 Hawk. P. C. chap. 64, sec. 30.] This doctrine will apply to a lessee who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, though no one attempt an entry; or to a lessee at will detaining with force after the will is determined.—4 Com. Dig. Forcible Detainer, [B. 1.]

But a man will not be guilty of the offence of forcible detainer for merely refusing to go out of a house, and continuing therein in despite of another. [1 Hawk, P. C. chap. 64, sec. 30.] So that it is not a forcible detainer if a lessee at will, after the determination of the will, deny possession to the lessor, when he demands it; or shut the door against the lessor when he would enter; or if he keep out a commoner, by force, upon his own land.—4 Com. Dig. Forcible Detainer, [B. 2.]

## LANDLORD'S REMEDIES AGAINST THE TENANT.

*Use and Occupation.* — Where there was a verbal lease for two years, but the tenant never entered, the Court of Exchequer held he could not be sued in this action as for use and occupation; for he neither had, held, used, occupied, possessed nor enjoyed. 1 Cr. & J. 391. So, where a tenant, by a written agreement, has agreed to take the premises from a future day, it was held not sufficient merely to put in and prove the agreement, but that evidence must also be given of some occupation under it. 7 Car. & P. 610. But if it be proved that the tenant took possession for a time, however short, he is liable to be sued in this action until the end of the term. 6 Bing. 206. And where the defendant agreed to rent a house, and sent in a woman to clean it, and workmen to paper one of the rooms, this was holden to be sufficient evidence of occupation. If a man enter under an agreement for a lease, he is tenant at will until the lease is granted, or a tenancy from year to year can be implied; and, in the meantime, he is liable in this action for the time he has occupied. So, payment of rent is a sufficient recognition of the right of the landlord to support an action for use and occupation, although it appear by the plaintiff's evidence that the defendant originally came in under another person, and that the plaintiff has but an equitable title. So, any other admission of the tenancy by the tenant, either express or implied, will enable the landlord to maintain this action against him. 3 Camp. 372.

If there be a lease, or an agreement for a lease, and there have been no payment of rent, or other matter from which (independently of the lease or agreement) the relation of landlord and tenant between the parties may be implied, the lease or agreement may be proved in the ordinary way. 7 Car. & P. 13.

The plaintiff must prove the amount of compensation he ought to have, for the use and occupation of the premises during the time for which he alleges rent to be due. If there have been no agreement between the parties, fixing the rent to be given for the premises, the plaintiff must prove, by witnesses, the sum for which they could reasonably be let to a tenant; or, if the defendant have previously paid rent for them, the amount of rent that he paid.

**FORFEITURE.** — The tenant forfeits his lease if he do any act by which he impugns or disaffirms the title of his landlord; if he sue out a writ, or resort to a remedy which claims or supposes a right in him to the freehold; or if, in an action against him by the landlord, grounded upon the lease, he resist the demand under a grant of a higher interest in the land; or, if by matter of record he acknowledge the fee to be in a stranger; if it be stipulated in the lease or agreement under which the tenant holds the premises, that if he be guilty of a breach of a particular covenant or stipulation, or, generally, of any of the covenants in the lease, or stipulations in the agreement, on his part to be performed or observed, that the landlord may re-enter — if he be guilty of any such breach, the landlord may accordingly enter, or bring his ejectment. But the stipulation in the lease or agreement which gives this power of re-entry is construed very strictly. Where a lease contained a proviso for re-entry, if the tenant should make default in performance of any of the covenants therein: the court held that it extended only to *affirmative* covenants, and not to *negative* covenants, for these were not to be performed. 1 B. & Ad. 715.

*Waiver.* — An acceptance of rent, which accrued subsequent to a forfeiture, will be a *waiver* of it, if the landlord knew of the breach of the condition or covenant from which it arose, at the time he received the rent; for a receipt of rent is an admission that the tenancy is then subsisting. — 6 B. & C. 519.

*Repairs.* — If there be a power of re-entry for non-performance of a covenant to repair, or of covenants in the lease generally, and one of them be a covenant to repair, and the premises are allowed to go out of repair, the landlord may bring an ejectment forthwith for the recovery of the premises, without any previous notice requiring the tenant to put them in repair, if no such notice be required by the terms of the lease. What defects in the state of repair of the premises amount to a breach of the covenant, must in all cases depend upon the manner in which the covenant is worded, considered also with reference to the nature of the premises. Upon a general covenant to repair and keep in repair, the tenant is not obliged to put in new floors, or the like, but merely to repair the old ones, although the new floor would be the more substantial way of making the repair; if he keep the premises in substantial repair, it is sufficient. If the lease were of a very old building, it is not meant by such a covenant that the tenant should restore it in an improved state, nor that the consequences of the elements should be averted; but the duty of the tenant is to keep it as nearly as may be in the state in which it was at the time of the

lease, by the timely expenditure of money and care. The state of the building at the time of the lease, however, must be established by general evidence merely, and not by going into details. But under a covenant substantially to repair, uphold, and maintain a house, it has been holden that the tenant was bound to keep up the inside painting. And the covenant is often framed in such a way, as to oblige the tenant to do much more than he would be bound to do by the terms of the ordinary covenant to repair, and it must be construed accordingly. A mere enlargement of windows, opening external doors, taking down partitions, or making other alterations in the premises, however, cannot be deemed a breach of a covenant to keep the premises in repair; they may be waste, in the legal acceptance of the term, but they are not a breach of a covenant to repair. — 4 B. & Ad. 126.

Whether under a covenant to repair and keep in repair, the tenant is bound to rebuild the premises in case they are destroyed by fire, was at one time considered doubtful. But it is now well established that he is bound to rebuild, 6 T. R. 650; unless in the covenant casualties by fire be expressly excepted, 6 T. R. 483; or there be an express covenant by the landlord himself to rebuild in such a case. Besides proving the want of repair, the plaintiff must prove the damage sustained by the breach of covenant. — 7 Mees. & W. 601.

*Insurance.* — The landlord may bring an ejectment, if the tenant covenanted to keep the premises insured, and has not, or have failed in payment of the premium.

*Waste.* — Where a right of entry is reserved to a landlord, in case his tenant commits waste, it is generally construed to be such waste as may be injurious to the reversion.

*Assigning or Underletting.* — In this, as in all other cases of forfeiture, the covenant or stipulation not to assign or underlet, &c., is construed strictly in favor of the tenant, and against the forfeiture. A proviso for re-entry, if the tenant shall assign the premises, does not prevent him from underleasing part of them. Even a proviso not to assign, transfer, set over, or otherwise do or put away the lease or premises, has been holden not to extend to such an underlease. But a covenant not to let or assign, comprehends an underlease. A covenant not to underlet the premises, is not broken by letting part of them in lodgings. — 4 Camp. 77.

*Carrying on a Trade.* — A covenant existing on the part of the tenant not to carry on any particular specified trade, or allow the same to be carried on in the house; if a power of re-entry be reserved in such a case, the landlord may enter, upon finding any trade carried on in it, strictly within the meaning of the covenant.

*Buildings.* — Where land is let to a man, upon which he agrees to erect a building thereon within a certain time, with a power of re-entry to the landlord in case he fails to do so, but no lease is granted until the buildings shall be completed; if he fail in erecting the buildings within the time, the landlord may maintain ejectment to recover the premises.

*Non-payment of Rent.* — The landlord must prove that a demand was made for the rent, and that the same or some part thereof has not been paid. 4 Leon. 8. And a demand in fact must be proved, although there may have been no person on the premises at the time ready to pay the rent. Plowd. 70. The demand must be of the precise sum due; if he have demanded a penny more or less, it will be ill. 1 Leon. 305.

It must appear to have been made precisely upon the day when the rent was due and payable by the terms of lease. 1 Leon. 305. As, where the proviso is, that if the rent shall be behind and unpaid by the space of thirty, or any other number of days, after the days of payment, it shall be lawful for the landlord to re-enter; the demand must be made on the 30th, or other last day. Co. Lit. 202. And where the rent was payable quarterly, and two quarters being in arrear, the landlord demanded the amount of both; it was holden that he could not recover for forfeiture; for as to the first quarter, it was not demanded at the day. — 3 Car. & Payne, 613.

The demand must be made at a convenient time before sunset, upon the land, and at the most notorious place of it. 1 Saund. 287. Therefore, if there be a dwelling-house upon the land, the demand must be made at the front or fore door; but it is not necessary to enter the house, although the door be open. But if the landlord demand it of an undertenant, or any other person he may find there, provided it be upon the land, it will be sufficient; and it will be no objection to say that he ought to have demanded the rent generally, his immediate tenant not being there, and not to have demanded it of an undertenant. 2 D. & K. 29. All this, however, must be understood of cases where the lease specifies no place at which the rent is to be paid; for if a place be appointed

where the rent is to be payable, the rent must be demanded at that place. On the other hand, if the tenant meet the landlord, at any place, on or off the land, at any time of the last day of payment, and tender the rent, it will be sufficient to save forfeiture. *Maund's Case*, 7 Co. 28.

### TENANT'S REMEDIES AGAINST THE LANDLORD.

*Use and Occupation.* — If the premises were let to the defendant at a rent payable at certain periods, and before any rent was due, or before the rent sought to be recovered became due, the plaintiff evicted him; this is a good defence under the general issue, because the defendant ceased to hold or occupy the premises before any rent became due for them. 5 Mees. & W. 606. So if he be evicted from part, and he thereupon give up the residue, this is a complete defence as to the whole. 3 Camp. 513. But if, instead of giving up the residue, he retain it, he will then be liable to pay for it, on a quantum meruit. 3 Camp. 514. Where a tenant from year to year, at a rent payable half-yearly, quitted at the end of the current year, without giving any notice; and the landlord, before the end of the next half-year, re-let the premises to another tenant: this was holden to amount to an eviction, and that the landlord could not maintain this action against the first tenant, to recover any rent accruing subsequently to the time when he quitted. 8 D. & Ry. 67. But the landlord's merely putting up a bill upon the premises, for the purpose of letting them, will not prevent him from recovering. 3 Esp. 225. So, where A. let lands to B., and B. under-let to others, and A. gave notice to quit to the undertenants, in consequence of which, one of them quitted the lands occupied by him, and they remained untenanted for a whole year; B. then re-let them: it was holden that A. could not recover from B. the rent of the unoccupied premises for the time they were so unoccupied; for his conduct, in giving notice to quit, amounted to an eviction. 1 Stark. 94.

*Conditional Renting, and condition not performed.* — If the agreement to pay rent, on the part of the tenant, be conditional, merely upon the landlord's doing something to the premises, such as furnishing them or the like; if the landlord have not complied with the condition, this will be a good plea in bar to the action, for the rent does not begin to accrue until the condition has been performed. 7 Ad. & El. 54.

If the premises be let knowingly, for an illegal or immoral purpose; if, for instance, the landlord let the house for the purpose of prostitution, knowingly, and allow it to continue to be used for that purpose, he cannot recover the rent, as for use and occupation. Ry. & M. 251.

Where a tenant held a shop and house from year to year, and the landlord, shortly before midsummer-day, having put in workmen, with the tenant's consent, to repair, the inconvenience was so great that all the tenant's lodgers left him, and the tenant was obliged to procure lodgings elsewhere for himself and his family; he paid his rent up to midsummer, and continued the shop until the 5th July following, when he quitted without notice: the court held, that as he had no beneficial occupation after midsummer, an action for use and occupation could not be maintained against him for rent accruing after that time.

Also, if the landlord, by any misconduct upon his part, render the occupation of the tenant so uncomfortable, that he is obliged to quit the premises, and seek a residence elsewhere, it should seem that he could not afterwards recover in an action for use and occupation of the premises after the defendant had quitted them. 7 Dowl. 678.

And lastly, the defendant may prove that before any part of the rent became due, he surrendered the premises in question to the plaintiff, and that the plaintiff accepted of the surrender. And where, in the middle of a quarter, the landlord accepted the key of the leased premises from the tenant, under a verbal agreement that upon her giving up possession, the rent should cease; and she never afterwards occupied: it was holden that the landlord could not recover, as for use and occupation, for a time subsequent to the tenant's giving up the key. 5 Taunt. 518. And in a subsequent case, where apartments in a house were let to a tenant for a year, at a rent payable quarterly, and during a current quarter, upon some dispute between them, the tenant told the landlord she should quit the lodging, to which the landlord assented, and, on the tenant's leaving, accepted possession of the rooms: it was holden that the landlord could not recover rent, either for the whole of the quarter, or even for that portion of it which had elapsed before the tenant quitted; for the tenancy being put an end to before any rent became due, none was payable. 8 B. & C. 324.

# COMMON LAW

IN RELATION TO

## DIVISION FENCES, WALLS, NUISANCES, AND PRIVATE WAYS.

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### CHAPTER II.

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#### DIVISION FENCES.

It is so notoriously the duty of the actual occupier to repair the fences, and so little the duty of the landlord, that, without any agreement to that effect, the landlord may maintain an action against his tenant for not so doing, upon the ground of the injury done to the inheritance. And an action on the case for not repairing fences, whereby another party is injured, can only be maintained against the occupier, and not against the owner of the fee, who is not in possession. 4 T. R. 319, Woodfall's Landlord and Tenant, 707.

The general law respecting the obligation of the occupants of adjoining lands to make and maintain partition fences, may be stated as follows:

1. At common law, the tenant of a close was *not* obliged to fence against an adjoining close, unless by force of prescription.

2. At common law, when a man was obliged by prescription to fence his close, he was not obliged to fence against any cattle but those which were *rightfully* in the adjoining close.

3. At common law, a man though not bound to fence against an adjoining close, was still bound, at his peril, to keep his cattle in his own close, and prevent them from escaping.

4. The legal obligations of the tenants of adjoining lands to make and maintain partition fences, where no prescription exists and no written agreement has been made, rest on statute.

5. An assignment, pursuant to the statute, imposes the same duty as would result from prescription.

6. Where there is no prescription or agreement, the provisions of the statute oblige a tenant, liable to make the partition fence, or any part of it, to fence only as in the case of prescription at common law; that is, against such cattle as are *rightfully* in the adjoining land.

7. Every person may maintain trespass against the owner of cattle found on his land, unless such owner can protect himself by the provisions of the statute or by written agreement, or by prescription.

In most, if not all, of the States, the foundation of all obligations to make and repair fences, (where no agreement has been made,) rests on statutes, which require that the respective occupants of adjoining enclosures shall make and repair sufficient fences at their equal expense.

Thus, by the Revised Statutes of Massachusetts, ch. 19, the owner of a close can compel the owner of the adjoining close to make and maintain a partition fence.

In New York, also, the statute has altered the rights of the parties. Where the lands of two persons join, each shall make a just proportion of the division fence, unless they agree to let their land lie open. If any person shall neglect to make or keep in repair, his proportion of such fence, he shall be liable to such damages as shall accrue by reason of his negligence; and if he omit to make or repair his proportion of the fence, for one month after notice and request, then the party injured may make or repair the fence at the expense of the party so neglecting to do it. And in case any person who shall have made his proportion of the fence, shall be disposed to throw up his lands for common feeding, or to let the same lie open, he shall give three months' notice to the person or persons in possession of the lands adjoining; and if the fence shall be removed before the expiration of three months, the person removing it shall pay the damages sustained by such removal. 3 Wend. 145.

The only effect of throwing up land, or permitting it to lie open is, to remit the parties to their common law rights and duties, which are, that a tenant of a close is not obliged to fence against an adjoining close, and without such fence may bring trespass for an entry of cattle; the owner of the cattle being obliged to keep them on his own premises, in the absence of any agreement or prescription about fences. 3 Wend. 142.

In many of the States, where, by the statutes, the respective occupants of adjoining enclosures are required to make and repair sufficient fences at their equal expense, it has been decided, under these statutes, that the obligation to make and maintain a partition fence is equally operative upon both adjacent owners; that each party is equally bound to move in the matter; and that, until such division, there can be no deficiency or neglect alleged as to the fence of either party, separately and individually. If either, therefore, put cattle on his own land, and they enter upon the land of the adjacent proprietor, there being no partition of the fence separating the lots, he will be liable to an action of trespass therefor. This is the law in Maine; New Hampshire, Massachusetts, New Jersey, Pennsylvania, and, probably, in most of the other states. 4 Metc. 589; 5 Greenl. 356; 4 N. Hamp. 36; 7 N. Hamp. 518; 4 Halst. 384; 3 Harrison, 368; Addison R., 258.

It has been decided in Massachusetts, that, upon general principles, it is no more the duty of the individual, who

has a field adjacent to that which his neighbor proposes to depasture with his cattle, to take the incipient steps to cause a partition of the fences between their adjacent lands, than of him who owns the cattle, and intends to use his land for depasturing them. Both parties are entitled to the privilege given by the statute, authorising proceedings for dividing their fences, and assigning to each his proper portion thereof; and if either wishes to avail himself of its provisions for his protection, he must move in the matter, if his neighbor does not. By taking the proper steps, and causing a partition to be made of the fences, and duly maintaining and keeping in repair the part assigned to him, he can easily avoid all liability to an action, if his cattle escape into the adjoining lot through defect of the fence assigned to the owner of such lot. If he neglect to procure a division of the fence, it is not for him to complain, that the owner of the adjacent lot has been alike inactive in the matter; but the result must be that both parties must be presumed to elect, to occupy, and improve their lands under the rules of the common law, and subject to the common law responsibilities. 4 Metc. 589.

Where there is no prescription, agreement, or assignment, under the statute, whereby the owner of land is bound to maintain a fence, no occupant is obliged to fence against an adjoining close; but in such case, there being no fence, each owner is bound, at his peril, to keep his cattle in his own close. When a tenant, for any of the reasons before stated, is bound to fence against an adjoining close, it is only against such cattle as are *rightfully* in that close; and, in such case, if the fence be not in fact made, the owner of either close then adjoining, may distrain the cattle escaping from the adjoining close, *not rightfully* there. 5 Greenl. 357.

Where two men own adjoining closes, with an *undivided* partition fence, which both are equally bound to repair, each is bound to keep his cattle on his own land, at his peril. 7 N. Hamp. 518.

In Connecticut a contrary doctrine has been established; and though, by the common law, it is the duty of the owner of cattle to distrain them, and if he suffer them to trespass upon the lands of another, he is generally liable in damages, whether those lands were or were not enclosed by a sufficient fence. But in Massachusetts a different rule has been adopted, and the owners of lands are obliged to enclose them by a lawful fence, or they can maintain no action for a trespass done thereon by the cattle of another. 14 Conn. 292. The law in Vermont is the same, in this respect, as in Connecticut, and the following reasons are assigned for it by Judge Hutchinson: "The cattle of many persons, especially the cows of poor persons, in all parts of the state, have always been permitted to run upon the highways and commons, no man presuming to take them up damage-feasant, unless his own

fence would stand the test of the law. And this practice is well warranted by statute of Massachusetts, the provisions of which are so various and extensive, and form such an entire system upon the subject, it must have been intended to supersede the common law." 1 Vermont, 476.

As, by the common law, the tenant of a close is not obliged to fence against an adjoining owner or tenant (unless by force of agreement or prescription,) so the party who makes a fence between his close and that of an adjoining tenant, must make it wholly on his own land.

But, as in most of the States the occupants of adjoining enclosures are required by statute to make and repair sufficient fences at their joint expense, it would seem to be very clear, that the common law doctrine as to the adjoining tenant's rights and duties concerning fences, is not applicable in those States. An occupant of land, therefore, who is bound to maintain a fence between his own and an adjoining enclosure, may place half of a fence, of reasonable dimensions, on the land of the adjoining owner; and he may cut half of a ditch on the land of such owner, when a ditch is proper for a partition fence. 2 Metc. 180.

The public have no right in a highway, but a right to pass and repass thereon; they cannot, therefore, justify turning their cattle thereon, for the purpose of grazing. And if cattle, so on the highway, for the purpose of grazing, escape into the adjoining close, the owner of the cattle cannot avail himself of the insufficiency of the fences in excuse of the trespass. 16 Mass. 33; 3 Wend. 142.

In Vermont cattle have always been permitted, in all parts of the state, to run upon the highways and commons, no man presuming to take them up damage-feasant, unless his own fence could stand the test of law. 1 Verm. 476.

Where cattle have escaped from an adjoining close into that of the defendant's, through *defect of fences* which the *defendant is bound to repair*, he is not justified in driving them out into the highway, and *leaving them there*, although it may be their best way back; and trespass will lie. It is perfectly clear, that the least to be expected from a party in the situation of the defendant is, that he should put back the cattle into the place in which they were before they quitted it, in consequence of *his neglect*. 8 Ad. & E. 311.

## PARTITION WALLS.

Where a party wall exists between two buildings, belonging to different persons, if one of them take it down with his building, he must re-erect it in reasonable time, and with the least inconvenience. The other owner shall contribute to the expense, if the wall required repairs; but he cannot be charged with the expense of a wall more costly than the former one. 2 Hilliard on Real Property, 86.



If two persons have a party wall, one-half of the thickness of which stands on the land of each, they are not therefore tenants in common of the wall, or of the land on which it stands, although the wall was erected at the joint expense of the two proprietors. The common use of a wall separating adjoining lands belonging to different owners, is *prima facie* evidence, however, that they are tenants in common. 5 Taunt. 20, 257.

If the owner of a house in a compact town, finds it necessary to pull it down, and remove the foundations of his building, and he gives due notice of his intention to the owner of the adjoining house, he is not answerable for the injury which the owner of that house may sustain by the operation, provided he remove his own with reasonable and ordinary care. Where there had been no party wall, but the wall of the house pulled down, stood wholly on its lot, yet if the beams of the house rested upon the wall pulled down, and had done so for a period sufficient to establish an easement by prescription, the owner of the adjoining house would be entitled to have his beams inserted for a resting-place in the new wall. 3 Kent, 437.

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## OF NUISANCES AND OTHER INJURIES TO THE POSSESSION.

*Who may Sue for Damages occasioned by a Nuisance?*—The tenant's possessory interest will entitle him to an action against a wrongdoer for any injury done to his possession, whether that injury be in the nature of a *nuisance* or otherwise. And, where the injury does not extend beyond a temporary interruption of the enjoyment of the lessee, he alone being injured, is clearly the only party who can have any right to sue, and may of course recover the full measure of damages. If, however, the injury is of so grave a character as to affect not merely the temporary right of the tenant, but likewise the permanent value of the property, here the tenant and the landlord may *both* maintain actions for the injuries done to their respective estates. They are both injured, but in different degrees; the tenant, in the interruption to his estate and the diminution of his profits; and the landlord in the more permanent injury to his property. 1 Walford on Parties to Actions, 233. 11 Mass. 519.

*Against whom an Action of Nuisance may be brought.*—As a general rule an action for nuisance seems to be maintainable in four different cases.

*First*, against a party who employs his premises so as to cause a nuisance to his neighbor; and this either for the original erection, or for the subsequent continuance. Com. Dig. Action on Case for Nuisance, 1 Stark, 22; M. & M. 350.

*Secondly*, the action lies against any subsequent occupier who

takes premises upon which a nuisance exists, and continues it, and this by whatever title he may come in, by lease, assignment, or the like. Thus, one who succeeds another in the occupation of premises upon which a steam engine is erected, is liable for any annoyance that may be thereby occasioned to the neighborhood in his own time. So, likewise, if a husband, in his lifetime, divert a stream of water, by means of a pipe and cock, to his house, an action lies against his wife if, after his death, she occupy the house, and use the water, for every turning of the cock is a fresh nuisance. Nay, even though the new occupier in no way contributes to the production of the nuisance beyond a passive enjoyment of the premises as he finds them, he is still liable. Thus, where the owner of a mill adjoining the plaintiff's meadow, sometime before the date of the action, raised the banks of his mill-pond so high, as to cause the water from it to overflow the meadow, and he afterwards let the mill to the defendant; the plaintiff thereupon sued the defendant, and obtained a verdict upon the ground that there was a continuance of the nuisance by the present defendant, and that was enough to subject him to the action. 5 Co. 101 a; R. & M. 189; Dyer, 319; 2 Salk. 460; Cro. Jac. 373, 555.

*Thirdly*, the action lies against any one who, from the relation in which he stands to the land upon which the nuisance is erected, must be inferred to possess the power, either of originally preventing it, or, at any rate, of putting an end to its continuance, and who fails to do so; for his neglect reasonably fixes him with the charge of sanctioning and upholding it, as much as if he had in the first instance given the authority for its erection. Thus, if one raises a building on his own land, so high as to obstruct his neighbor's ancient lights, and leases it in this state to another, either the landlord or tenant is liable to an action of nuisance. So if the nuisance be erected in the first instance during a tenancy, and the landlord choose to renew the tenancy, after the tenant has so erected the nuisance, without any stipulation for its removal, that will make the landlord liable, for he must not let the land with a nuisance upon it. So, if a man leases premises for a purpose which he must know is likely to produce a nuisance, he is liable. So, where a man leases premises in that state and condition that, without particular care, the use of them is likely to end in a nuisance, and does not, at the same time, stipulate for the tenant's taking the necessary measures to prevent it, or reserve to himself a right of entry for the purpose; here an action lies against him, if the nuisance afterwards occurs, for want of such care on the part of the tenant. As, if a man let out a row of houses, with a common privy, to different tenants, without exacting from his tenants an obligation to cleanse, with a right of entry for himself in default of their doing so, he is liable if, by neglect of cleansing, a nuisance be subsequently occasioned. Nay, if a man do nothing

more than simply purchase premises with an existing nuisance upon them, though there be a lease for a term at the time of the purchase, so that the purchaser has no opportunity of removing the nuisance, yet by purchasing the reversion he makes himself liable for the nuisance ; but if, *after* the reversion is purchased, the nuisance be erected by the occupier, the reversioner incurs no liability, but the sole remedy is against the tenant. 2 Salk. 460 ; 1 A. & E. 827.

*Fourthly*, an action lies against a contractor, or other party, exercising a regular, independent employment, who, being employed by the owner of premises to do something about them in the usual course of his employment, does it in so careless, unskilful, or insufficient a manner, that the work, while it is under his immediate control and superintendence, causes a damage to the neighboring premises. 2 D. & R. 33.

*What are Nuisances ?* — The cases in which nuisances may and do exist, are extremely numerous ; by some corruption of the air ; of the water one uses as necessary, in its pure state, for his family or cattle ; by some troublesome noises ; and by keeping in society vicious and immoral places of resort ; and in the question, if a nuisance or not, the more particular question usually is, if the place complained of corrupts, in some considerable degree, the air or water, to render it unfit, or materially less fit, for its usual purposes, or unwholesome ; or are noises, such as to make a family very uncomfortable, introduced where families are previously settled ; or are the places of resort such as to essentially corrupt and injure in their natural tendency good morals ; or how far the light of a house illegally darkened, so as materially to injure the owner ; how far water illegally thrown on his building really rots them, &c. 3 Dane's Abr. ch. 74, a. 5, § 4.

**NUISANCES TO HOUSES.** — These are of three kinds. 1st. By over-hanging. 2d. By stopping ancient lights. And 3d. Corrupting the air with noisome smells.

*Overhanging.* — If one build a house so near his neighbor's, that it throws water upon it, it is a nuisance ; and if one build his house so as to overhang his neighbor's, he may remove the nuisance before he is actually injured by rain falling. 2 Salk. 459.

The case of overhanging so as to cast water upon the land adjoining, is clearly a nuisance to, and a trespass upon, the adjoining land.

*Ancient Lights.* — The uninterrupted enjoyment of lights for twenty years raises a presumption in favor of the right ; and the obstructing or darkening of such lights, is a nuisance. But such use or enjoyment does not bind the owner of adjoining land, so as to preclude him from building against, or obstructing, these lights, unless he had *knowledge of their existence* ; and the occupation of his land by a tenant is not sufficient ground of itself for implying such knowledge. Thus, where lights had

been put out and enjoyed for above twenty years during the occupation of the opposite premises by a *tenant*; that will not conclude the *landlord* of such opposite premises, without evidence of his knowledge of the fact, and consequently will not conclude a succeeding tenant who was in possession under such landlord from building up against such encroaching lights. 11 East. 372.

In Massachusetts and Connecticut, an adverse right to lights and windows *cannot* be acquired by use, in any city.

There is one case where the law protects the enjoyment of lights, though not ancient. Thus, where one sells a house having doors or windows opening into a vacant lot adjoining and belonging to the vender, without reserving a right to build on such lot, or to stop the doors and windows, neither he nor his grantee of such lot can lawfully stop them. 12 Mass. 157.

But merely intercepting the prospect without obstructing the light, or opening a window, whereby the privacy of a neighbor is disturbed, are not nuisances. 1 Mod. 55; 3 Camp. 82.

A total privation of light, however, is not necessary to support this action for a nuisance; for if the plaintiff can prove that by reason of the obstruction he cannot enjoy the light in so free and ample a manner as he did before, it is sufficient to maintain this action. 3 D. & E. 159.

As the right to light is acquired by enjoyment, so it may be lost by a discontinuance of the enjoyment, unless the party who ceases to enjoy at the same time does some act to show an intention of resuming the enjoyment within a reasonable time; and the non-user of the lights for less than twenty years, under such circumstances, will deprive him of his right. Thus, if he build a blank wall to his house, where the lights formerly existed, this is such an abandonment as will extinguish his title. 3 Barn. & Cr. 332.

An action does not lie against a person for erecting a fence on his own land, whereby he *obstructs* the lights of his neighbor, let the notice be what it may, if the lights be not *ancient* lights, or his neighbor has not acquired a right, by *grant*, or *occupation and acquiescence*. 13 Wend. 261.

Nor does an action lie for opening a window overlooking the privacy of another; and, on the contrary, although the doing so be an encroachment, the continuance thereof for twenty years will ripen into a right. 13 Wend. 261.

*Corrupt Air.* — In regard to this, it is most difficult to determine what is or is not a nuisance in a legal sense. The law cannot punish every the least bad smell, or the least corruption of the air; if it were to do this, men would not be able to live together in cities or towns. There must be some considerable corruption of the air for the law to notice. It is, therefore, clearly settled, that it is no nuisance, unless the air be made noxious; but if one erects a privy, or keeps his hogs or other

noisome animals, or lime-kiln, or his trade as a tanner, tallow-chandler, or other offensive trade, (for such ought to be carried on in their proper places,) these are nuisances, when so near one's house that the stench makes the air unwholesome. 3 Dane's Abr., c. 74, a. 2, § 14.

*Nuisances to Lands.*—If one erect a smelting house for lead so near the land of another, that the smoke kill the corn and grass growing on the land of another, or injure the cattle thereon, it is a nuisance; and any act in itself lawful, which by being done in a certain place injures the property of another, is a nuisance. 3 Black. Com. 217.

If one keep gunpowder so near buildings as apparently to endanger them, it is a nuisance; but if, at the time of setting up the powder-house, no houses were near, but afterwards others were erected, it is at the peril of the builder. 12 Mod. 342.

If a man sells grass on his land to a person who is to cut it and carry it away by such a time; and that person mows it, and suffers it to lie there, after the time agreed for its removal, and it rots and kills the grass, it is a nuisance. 1 Com. D. 292, 293; Willis, 71.

If a person have a right of way across another's land, and the owner of the land obstructs him in the use of it, either by totally stopping it, or putting logs across it, or *ploughing over it*, it is a nuisance. 3 Black. Com. 218.

It is a nuisance to stop or divert water that runs to another's meadow or mill; or to corrupt or poison a water course, by erecting a dye-house or a lime-pit for the use of trade, in the upper part of a stream. 3 Black. Com. 218; 2 John's Ch. R. 164.

The disturbance of mill owners in the enjoyment of their rights, both in *diverting* the water, and in *flooding* their mills with an *excess* of water beyond their rights, is a nuisance. 22 Pick. 333.

The existence of a nuisance, for a long period of time, as, for twenty years, is sufficient to establish a prescriptive right to maintain such nuisance; and it is, therefore, a good defence to an action of nuisance, that the nuisance has existed for twenty years. And a party injured has no right to abate a nuisance of twenty years standing.

*Public Nuisances.*—Every unauthorized obstruction of a highway to the annoyance of the citizens, is an indictable offence and a nuisance; and independently of any legal proceedings, it appears that any person may lawfully abate a public nuisance, at least if it be placed in the middle of a highway, and obstruct the passage of those travelling over the road. But though a party may remove the nuisance, yet he cannot remove the materials, or convert them to his own use; and so much of the thing only as causes the nuisance ought to be removed.—2 Salk. 458.

One who is injured by an obstruction placed unlawfully in a highway, cannot maintain an action for damages if it appears

that he did not use ordinary care, by which the obstruction might have been avoided. Thus, where the plaintiff, who was riding violently in a public highway, was thrown down with his horse, and injured by means of an obstruction placed there by the defendant; it was proved, that if the plaintiff had not ridden very hard he might have seen the obstruction and avoided it, and on this ground he failed in the action. 2 Pick. 624.

*Abatement of Nuisances.*—There are two ways to redress a nuisance; one by action, by which the party injured recovers damages and has judgment that the nuisance shall be removed; the other, where the party injured abates the nuisance himself. The abatement of a nuisance by the party injured, does not, however, preclude him from bringing an action to recover the damages sustained by him anterior to such abatement. 4 Conn. 418.

If a man on his own soil erect a thing which is a nuisance to another, as by stopping a rivulet, and so diminishing the water used by him for his cattle, the party injured may enter on the soil of the other and abate the nuisance, and justify the trespass. So if one erects a gate across a way, which ought not to be there, or otherwise unlawfully obstructs the way, any one who has a right to pass over the way, may remove the obstruction. So if any one erects a building, shed or wall, so as to obstruct *ancient lights*, though on his own land, it is a private nuisance; and the owner of the ancient lights may *peaceably* enter on his land and pull it down. So if a man has a hog-stye or other thing on his land, that corrupts the air in and about his neighbor's house, and makes it unwholesome, his neighbor may lawfully remove the nuisance. So if one builds a house so near his neighbor's that it throws water upon it, his neighbor may abate so much as overhangs or projects beyond the line; but he who abates must be careful he abates no more than overhangs, as no more is a nuisance. 2 Smith 9.

Great care should be taken in abating a nuisance, not to remove or pull down anything more, than is absolutely necessary for the abatement of the nuisance, as otherwise the party will render himself liable to an action of trespass. If indeed the nuisance is of so simple a character, that there cannot possibly be any mistake as to the extent of the nuisance, as a gate wrongfully erected across a way, or the obstructing of a stream, &c.: or if the injury occasioned by the nuisance be *immediate and irreparable*, of such a nature that no pecuniary compensation, which the party injured might recover by an action at law, could satisfy the wrong done him, then the most effectual remedy is for him to abate the nuisance himself. But where this is not the case, the party had better resort to an action of law, whereby he will recover damages for the injury done him, and have the nuisance abated by the officers of the court, and thus avoid the danger of being sued for trespass.

A thing in a situation to be a nuisance cannot be abated till it actually becomes one. 12 Mod. 519.

The abater of a private nuisance cannot remove the materials further than is necessary, or convert them to his own use. 1 Stk. 173.

It is a general rule that the abatement must be limited by its necessity, and no wanton or unnecessary injury must be committed. 2 Salk. 488.

*Negligence.*—Where notice had been given to the occupier of adjoining premises of an intention to pull down, and remove the foundations of a building, or part of the footing of one of the walls on which one of the walls of such adjoining premises rested, it was held, that the party giving notice was only bound to use *reasonable* and *ordinary* care in the work, and was not bound in any other way to secure the adjoining premises from injury, although, from the peculiar nature of the soil he was compelled to lay the foundation of his new building several feet deeper than that of the old. 4 Car. & P. 161.

But if the adjoining house was an *ancient* one, or had been erected for a long period of time, as for twenty years, then it would have a right to the support of such wall, and an action would lie for its removal. 3 B. & Add. 87.

It is a rule of law that every person must use his own property, so as not to injure or destroy that of his neighbor; and it is now settled that the owner of premises adjoining those pulled down must shore up his own on the inside, and do every thing proper to be done upon them, for their preservation. But in an action for an injury to the plaintiff's premises, in consequence of the pulling down of the defendant's house adjoining, the plaintiff may recover damages for any injury actually caused by the *negligence* of the defendant, although he has not himself used those precautions, which it was his duty to adopt against such injury. 3 Moody & M. 362.

An action lies against a party who by *carelessness* or *negligence* in excavating his own ground. either *causes* or *accelerates* the fall of an adjoining house. 3 Nev. & Mar. 739.

A person who has a flap-door in the foot of the pavement of the street, opening into a cellar underneath his house, is bound, when he uses it, to conduct his business with such a degree of care, as will prevent a reasonable person, acting himself with an ordinary degree of care, from receiving any injury by it. 4 Car. & P. 337.

It is universally the duty of the occupier of a house having an area fronting a public street, so to fence it as to make it safe to passengers, and it is no defence to an action against him for neglecting so to do, whereby the plaintiff fell down into the area, and was hurt, that when he took possession of the house, and as long back as could be remembered, the area was in the same open state as when the accident happened. 3 Camp. 398. Woodfall's Land. & Ten. 849.

If the owner of a house is bound to repair it, he, and not the occupier, is liable to an action on the case for an injury sustained by a stranger from the want of repair. 2 H. Black. 349.

An action lies against a party for so negligently constructing and keeping a hay rick on the extremity of his land that in consequence of its spontaneous ignition, his neighbor's house is burnt down. 3 Bing. N. C. 468.

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## OF PRIVATE WAYS.

A right of way over another man's land may arise either by *grant* of the owner of the soil, or by *prescription* which supposes a grant, or from *necessity*. 1 Rol. Abr. Chemin private, 10.

*By Grant.*—A grant of a right of way, to be valid, must be by *deed*; so also must a release. 9 Metc. 402.

Where a right of way is granted, without any designation of the place in the deed, it becomes located by usage for a length of time. And being so located, it cannot afterwards be changed by the grantor.\* But if changed, and the grantee has, for a length of time, used the new road, his acquiescence in the alteration will be presumed. 12 John. 222.

Under a grant of a way from one close to another, in, through, and along a particular way, the grantee is not justified in making a transverse road across the same. So a reservation in a lease of a right of way on foot, and for horses, oxen, cattle, and sheep, does not give any right of way to carry manure. And it has been decided, also, that a right of way for agricultural purposes is a limited and qualified right of way, and does not necessarily confer a right to use such way for general and universal purposes. And generally a grant of a right of way is construed strictly, and the grantee cannot use the way for any other purpose than that for which it was granted. 1 T. R. 560; 1 Ad. & E. N. S. 792; Holt, 455.

Under a grant of a right of way *across* the grantor's lot of land, the grantee has not a right to enter at one place, go partly across, and then come out at another place on the same side of the lot; and parol evidence to show that such was the intention of the grant is inadmissible. Held, also, that dragging timber from the grantee's lot upon the grantor's land, for the purpose of turning it round, was a *misuse of the right of way*. 5 Pick. 163.

The owner of land, over which his grantor has reserved a passage-way, may lawfully cover such passage-way with a building, if he leave a space so wide, high, and light, that the way is substantially as convenient as before for the purpose for which it was reserved. And he is not liable for damages, although the passage-way, by reason of its being so covered, becomes to a greater extent the resort of strangers, to the annoyance of the grantor. 2 Metc. 457.

All which the person having this easement can lawfully claim is the use of the surface for passing and repassing, with a right to enter upon and prepare it for that use, by levelling,



gravelling, ploughing, or paving, according to the nature of the way granted or reserved; that is, for a foot-way, a horse-way, or a way for all teams and carriages; and the owner of the soil has all the rights and benefits of ownership consistent with such easement. When no dimensions of a way are expressed, the dimensions must be inferred to be such as are reasonably sufficient for the accomplishment of the object. If it be a footway only, it shall be reasonably wide and high for all persons to pass on foot with such things as are usually carried by foot passengers. If it be a way for teams and carriages, it shall be of sufficient height and breadth to admit of carriages of the largest size in common use, and high enough for loads of hay and other similar vehicles usually moved by teams. 2 Metc. 457; 6 Mass. 454.

The *grantee*, and not the grantor, of a right of way must keep it in repair; and if the way become impassable from want of repairs, the grantee cannot deviate from the way and pass over on the adjoining land. Thus, it is no defence to an action, that the defendant has a right of way over part of the plaintiff's land, and that he had gone upon the adjoining land because the way was *impassable* from being overflowed by a river. 12 John. 222; 2 Doug. 745.

But though the grantor of a right of way is not liable for suffering it to be out of repair, unless he is bound by contract or prescription to keep it in repair, yet he is liable for stopping it. 12 Mass. 65.

*By Prescription.*—In most of the States, the adverse enjoyment of a right of way for twenty years establishes an absolute right to the way, and is a *legal* bar to any action brought by the owner of the soil against the person using the way; and, in some of the States, even a less time than twenty years is sufficient to establish such right—as in Vermont and Connecticut fifteen years are held sufficient. But in New Jersey and Pennsylvania, no length of time is sufficient to confer an *absolute* right; though the enjoyment of a right of way for a long time, as for twenty years, would raise a presumption of a grant, and, unless rebutted by other evidence, would warrant a jury in deciding against the owner of the soil, and in favor of the person using the way. 2 Brown's Penn., R. 292; 3 Halst. N. J. R. 125.

To support a claim to a right of way to and from an estate by twenty years' adverse possession, the claim must be shown to have been *uninterrupted*. Hence, if A. has adverse possession for two years only, and conveys his estate, *several years afterwards*, to B., who has adverse possession for eighteen years, the two years' possession by A. cannot be added, in order to make up the twenty years. 7 Metc. 33.

Neither acts of *courtesy*, nor *convenience*, can give one a right of way over another's land. 3 M'Cord, 131.

A right of way is not lost by a non-user for any period less than twenty years. 10 Pick. 311.

*By Necessity.* — If a man, having two parcels of land, to one of which he has no access, except over the other, convey such *inaccessible* parcel, the grantee has a right of way to it over the other parcel, as incident to the grant. So if the owner convey the accessible parcel, retaining the inaccessible one, a right of way to the latter over the former is reserved to the grantor. A person claiming a right by necessity is entitled, however, only to a convenient way over the other's land, and will have no right to pass over it wherever he pleases. He must select a suitable route for his way; but in doing it he must regard the interest and convenience of the owner of the land; and when he has done it he will be confined to the same way, and may not change its course according to his wishes or caprice. 2 Cruise's Dig. 124; 24 Pick. 102; 15 Conn. 39.

Thus, if one has a right of way by necessity over the land of another, he is bound to use it so as to occasion the least possible inconvenience to the owner of the land. All that a person entitled to such an easement can reasonably claim, is a convenient way; and if this is allowed him by the owner of the land, he has no cause to complain. 2 Pick. 578.

A right of way by necessity cannot be claimed by one who has a way over his own ground, however inconvenient that may be. 3 Rawle, 492.

A way of necessity is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases; therefore, if at any subsequent period, the party formerly entitled to such way can approach the place to which it led, by passing over his own land by as direct a course as he would have done by using the old way, such way ceases to exist as of necessity. 2 Bing. 76; 15 Conn. 39.

*Highway.* — By the common law, the fee in the soil remains in the original owner, where a public road is made upon it, but the use of the road is in the public. The owner parts with these only; for if the road should be vacated by the public, he resumes the exclusive possession of the ground; while it is used as a highway, he is entitled to the timber and grass which may grow upon the surface, and to all the minerals which may be found below it. He may bring an action of trespass against any one who obstructs the road. 6 Pet. 498.

There is a temporary right of way over the adjoining land, if the highway be out of repair, or be otherwise impassable, as by a flood. Doug. R. 745.

*Running Water.* — Every man, through whose land water passes, may use it for watering his cattle or irrigating, and he may do this, either by dipping water from the brook and pouring it upon his land, or by making small sluices for the same purpose; but he must use it in this latter way so as to do the

least possible injury to his neighbor, who has the same right. And where the owner of land through which a natural stream flows, diverts the water for the purpose of irrigation, without returning the surplus into the natural channel, whereby the owner of land below, entitled to use the water in the same manner, is deprived of his privilege, an action lies. Streams of water are intended for the use and comfort of man, and every proprietor is entitled to a reasonable use of the water, and may apply it to domestic, agricultural, and manufacturing purposes; but not so as to destroy or *materially diminish*, or affect the application of the water by the proprietors below on the stream. 5 Pick. 175; 12 Wend. 331.

Where several owners of mill-seats on a running stream have a common and equal right to the use of the water, though no action lies against the owner of a mill above for any damage which the owner of a mill below may incidentally suffer from the *reasonable* use of the water by the former for his own benefit; yet the owner of the mill above has not an unlimited right to use the water as he pleases, or to stop the natural flow of the stream, so as to destroy or render useless the mills below. And if he shuts down his gate, and detains the water for an *unreasonable* time, or lets it out in such *unusual* quantities as to prevent the owner of the mill below from using it, or deprive him of a reasonable and fair participation in the benefit of the stream, he is answerable for the damage thus sustained. 17 John. 306.

The owner of an ancient mill may change the character and use of his mill at pleasure, without impairing his right to the water, if he does not thereby injure his neighbor's mill, and returns the water again to its ancient channel, 8 Greenl. 253.

The exclusive enjoyment of the use of water in a particular way for twenty years is sufficient to raise a presumption of title to such use; and it is not necessary that the water should have been used precisely in the same manner or to propel the same machinery. So after twenty years' uninterrupted enjoyment of a spring of water, an absolute right to it is gained by the occupier of the close in which it issues above ground; and the owner of an adjoining close cannot lawfully cut a drain whereby the supply of water by the spring is diminished. 3 Page R. 577. 1 Camp. 463.

A mill privilege cannot be considered as extinguished or abandoned by disuse, until such disuse, entire and complete, has continued twenty years. 7 Metc. 94.

*Mere priority* of occupancy of the flowing water of a river creates no right; and an adverse enjoyment of water in a stream, for any period less than twenty years, is not sufficient to establish a right by prescription. 5 N. Hamp. 231.

Where a right exists to use a certain quantity of water, a change in the mode or objects of the use, without increasing the quantity, is no violation of the right. 2 N. Hamp. 255.

# STATE LAWS

## RELATING TO

### LANDLORD AND TENANT.

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#### CHAPTER III.

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#### MAINE.

CHAP. 95. SEC. 17. A widow may remain in the house of her husband, ninety days after his death, without being chargeable with rent therefor.

SEC. 19. All tenancies at will may be determined by either party, by three months' notice in writing, for that purpose given to the other party; and, when the rent, due upon such lease, is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the days of payment; and, in all cases of neglect or refusal to pay the rent due on a lease at will, thirty days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

SEC. 20. The preceding section shall not be construed to extend, or be applicable to the proceedings in cases of forcible entry and detainer, or the notice required in such cases. On complaint made in writing and on oath, of any unlawful or forcible entry into any lands or tenements, a summons shall be served on the tenant seven days at least, before the day set for trial, &c.

CHAP. 125. SEC. 40. When any lot, or parcel of land, or any mill privilege shall be leased for the purpose of having a house, shop, mill, or other building erected, or placed thereon, and rent is reserved in the lease, all the buildings erected as aforesaid, together with all the interest which the lessee before had, or may have in the premises, by force of such lease, shall remain liable to be attached by any such lessor, or his assignee, to secure the rent due on such lease, notwithstanding any previous transfer of property by the lessee; provided such attachment be made within six months from the time such rent becomes due.

Suits must be commenced within six years. Also, all actions for waste.

CHAP. 128. SEC. 1. Any justice of the peace in the county in which he resides shall have jurisdiction in all cases of forcible

ble entry and detainer, except in a city or town where there is a municipal or police court.

SEC. 2. On complaint made to him, in writing and on oath, of any unlawful and forcible entry, into any lands or tenements, or any unlawful and forcible detainer, he shall issue his warrant, under hand and seal, directed to the sheriff or his deputy, or a constable of the town where the person charged resides, to summon him to show cause why judgment should not be rendered against him; which summons shall be served upon him by reading the same in his presence and hearing, or by delivering him a copy, or leaving it at his last and usual place of abode, seven days at least before the day set for trial.

SEC. 3. On return of such service, in case of the non-appearance and default of the party charged, or his failing to show sufficient cause, judgment shall be rendered against him for possession of the premises, and the justice shall issue a writ of possession to remove him.

SEC. 4. Should the defendant plead not guilty to the complaint, and file a brief statement of title in himself or some other person under whom he claims the premises in question, the justice shall thereupon order him to recognize to the complainant, with sufficient sureties, in such sum as the justice shall order, to pay all intervening damages and costs, and reasonable intervening rent for the premises; and said justice shall require the complainant to recognize to the defendant, with sufficient sureties, in a reasonable sum, conditioned to enter the action at the next district court, and prosecute the same to final judgment, and pay all costs adjudged against him; and, if either party shall refuse so to recognize, said justice shall enter judgment, as in case of non-suit or default, against the party so neglecting or refusing. Either party may appeal from the judgment of the justice, upon issue joined, to the next district court, recognizing, as aforesaid, to pay such costs as may be adjudged against him; and if the defendant shall appeal, he shall recognize to pay such reasonable intervening rent for the premises, as such justice shall adjudge, in case his judgment shall not be reversed on such appeal.

SEC. 5. Whenever a tenant, whose estate in the premises is determined, shall unlawfully refuse to quit the same, after thirty days' notice in writing, given by the lessor for that purpose, he shall be liable to the provisions of this act; provided he shall not have been in quiet possession of the premises three whole years next preceding the filing of such complaint.

SEC. 6. Every municipal and police court, now established, or which may be established, in any city or town, shall have exclusive jurisdiction of all cases of forcible entry and detainer, arising in the city or town where such court is or shall be established; and concurrent jurisdiction with justices of the peace and quorum in such cases arising in the counties in which they are or shall be respectively established.

## NEW HAMPSHIRE.

Page 224, SEC. 1. Any lessor, or owner of any lands or tenements, may at any time determine any lease at will, or tenancy at sufferance, by giving to the tenant, or occupant, a notice in writing to quit the same at a day therein named.

SEC. 2. If any tenant, or occupant, neglects, or refuses to pay the rent due and in arrear, upon demand, seven days' notice shall be sufficient. If the rent is payable more frequently than once in three months, whether such rent is due or not due, thirty days' notice shall be sufficient, and three months' notice shall be sufficient in all cases.

SEC. 3. If any lessee shall violate the condition of any written lease, notice to quit at the end of seven days shall be sufficient and equivalent to an entry for condition broken.

SEC. 4. If any lessee shall hold over after the expiration of a definite written lease, seven days' notice shall be sufficient.

SEC. 5. Every tenancy, or occupancy, shall be deemed to be at will, and the rent payable upon demand, unless a different contract is shown.

SEC. 6. Any lessee may terminate his lease by notice in writing in the same manner as the lessor, and such notice shall have the same effect for all purposes as a notice by the lessor to the lessee.

SEC. 7. The owner or lessor of any tenement or real estate, may recover possession thereof, against any lessee or occupant, holding the same without right, after a notice to quit the same in the manner herein prescribed.

SEC. 8. A writ of summons may be issued, returnable before a justice, which shall set forth in substance, that the plaintiff is entitled to the possession of the demanded premises, and that the defendant is in possession of the same without right, after notice in writing to quit the same.

SEC. 9. Such writ shall be served seven days before the return day thereof.

SEC. 10. If the defendant shall make default, or if on trial it shall be considered by the justice that the plaintiff has sustained his complaint, judgment shall be rendered, that the plaintiff recover possession of the demanded premises and costs.

SEC. 11. A writ of possession shall be thereupon issued by said justice substantially in the form prescribed by law, in the case of like writs issued in the court of common pleas.

SEC. 12. If the plaintiff shall neglect to enter his action, or to support the same, judgment shall be rendered for the defendant for his costs.

SEC. 13. Under the general issue the defendant shall not be allowed to offer any evidence which may bring the title to the demanded premises in question.

SEC. 14. If the defendant shall plead any plea which may bring in question the title to the demanded premises, he shall re-

cognize to the plaintiff, with sufficient sureties, in such sum as the justice shall order, to enter and prosecute said action at the next court of common pleas for the county, and to pay all rent then due, or which shall become due, pending said action, and the damages and costs which may be awarded against him.

SEC. 15. If the defendant shall neglect or refuse so to recognize, judgment shall be rendered against him in the same manner as if he had refused to make answer to the suit.

SEC. 16. After the filing of such plea, and the entry of such recognizance, no further proceedings shall be had before such justice, but the action may be entered and prosecuted in the court of common pleas in the same manner as if it had originally commenced there.

SEC. 17. Any party may, within two hours after the rendition of such judgment, appeal to the next court of common pleas for the county.

SEC. 18. The plaintiff, before his appeal is allowed, shall recognize to the defendant with sufficient sureties, in such sum as the justice may order, to enter and prosecute his appeal and to pay such costs as may be awarded against him.

SEC. 19. The defendant, before his appeal is allowed, shall recognize to the plaintiff, with sufficient sureties, in such sums as the justice may order, to enter and prosecute his appeal, and to pay all rent then due, or which may become due pending such suit, and such damages and costs as may be awarded against him.

SEC. 22. Nothing in this chapter shall be construed to prevent any landlord from pursuing his legal remedy at common law.

Page 243. No lease for more than seven years from the making thereof, shall be valid to hold the same against any person but the grantor and his heirs only, unless such lease be attested by two or more witnesses, acknowledged and recorded in the registry of deeds in the county in which such lands lie.

Any person interested in such lease may cause the same to be recorded.

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## VERMONT.

CHAP. 60, SEC. 6. No lease for more than one year from the making thereof, of any lands in this state, shall be good and effectual in law, unless the deed thereof be acknowledged and recorded, &c.

SEC. 23. The assignment of any lease of lands, if the lease is for a longer term than one year, shall be by deed, signed, sealed and witnessed, acknowledged and recorded.

SEC. 13. Tenants in common of any lands may join in any action which concerns their common interest in any such lands.

SEC. 14. In actions of ejectment for non-payment of rent, the plaintiff shall not be required to prove a demand of the rent in

arrear, or a re-entry on the premises, but shall recover judgment in the same manner as if the rent in arrear had been legally demanded and re-entry made ; but if the defendant in any such action, at any time before final judgment, shall pay into court the rent in arrear, with the interest and costs of suit, such action shall be discontinued.

SEC. 21. The plaintiff, in an action of ejectment, shall recover nothing for the mesne profits of the land, except on such improvements as were made by him or those under whom he claims.

CHAP. 42. SEC. 13. When any person, wrongfully and without force, shall obtain, or continue in possession of any lands or tenements, and after demand made in writing for the delivery of the possession thereof, by the person entitled to such possession, or his agent or attorney, shall refuse or neglect to quit such possession ; upon complaint thereof, in writing, to two justices of the peace, one of whom shall be a judge of the county court, they shall proceed to hear, try, and determine the same in like manner as in cases of forcible entry and detainer, and issue a writ of restitution accordingly.

SEC. 14. The preceding section shall not be construed to apply to any case where a person with, or without force, holds over any lands or tenements after the determination of the time for which the same were leased, or demised, by a written lease, or ejectment, accepted by the tenant, or to any person holding under the lessee.

SEC. 15. When any person shall wilfully, and with or without force, hold over any lands or tenements after the termination of the time for which they were demised or let to him, or the person under whom he claims, by a written lease or agreement, and after demand made, in writing, for the delivery of the possession, by the person entitled to the same, his agent or attorney, shall refuse or neglect to quit such possession upon complaint thereof, in writing, to any justice of the same county, such justice, by a jury of six men, empanelled in the same manner as juries are by law empanelled to attend justice's courts, shall proceed to hear, try and determine the same in like manner as in cases of forcible entry and detainer, and issue a writ of restitution accordingly.\*

SEC. 18. The complainant shall have a right to an action of trespass against the person complained of, and who, on trial, shall be found guilty, to recover treble damages from the time of notice given to quit the premises, and until that time, the real damages only.

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\* In the above cases, the original process is by summons and attachment as in civil suits, and the person complained against is not liable to be fined ; and any person who shall have remained three years in quiet possession of the premises, beyond the time for which they were demised, shall not be subject to the above provisions.



## MASSACHUSETTS.

No bargain and sale, or other like conveyance, of any estate in fee simple, fee tail, or for life, and no *lease*, for more than seven years from the making thereof, shall be valid and effectual, against any person, other than the grantor, and his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed duly acknowledged, and recorded in the registry of deeds for the county or district where the land lies.

When land is demised for the term of one hundred years or more, the term shall, so long as fifty years thereof remain unexpired, be regarded as real estate, so far as concerns the levying of an execution thereon; but all other terms for years shall be seized and sold on execution, in the same manner as personal property.

An action may be brought by and against executors and administrators, for any arrears of rent accrued in the lifetime of the deceased parties.

Upon neglect or refusal to pay the rent due according to the terms of any written lease, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Estates at will may be determined by either party, by three months' notice in writing for that purpose given to the other party; and when the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment;\* and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

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\* A tenant at will, paying by the week, month, or quarter, must give, or receive a written notice to quit, for the same period of time; and the expiration of the notice must be at the expiration of the quarter, month, or week. If there be a lease for a certain time, no notice is necessary, as the time of termination is presumed to be known by both parties.

A [written] notice to quit and deliver up the premises, held under an oral lease, which does not state or describe the cause for which it is given, nor the time when the tenant is required to quit, is insufficient to determine the lease. 2 Gray R. 224, 335.

In a general lease of a warehouse, or store, there is no implied warranty that the building is safe, well built, or fit for any particular use. 9 Cush. 89.

Where a contract of hiring contains no warranty, express or implied, that the premises are fit for the purpose for which they are hired, evidence is not admissible of the declarations of the lessor to that effect made at the time of the hiring. *ib.*

In a lease of a house, for habitation, there is no implied covenant that it is fit for habitation. *ib.* 242.

But, if the landlord has been guilty of any fraudulent concealment of defects, which ought in good faith to have been disclosed, or has resorted to any misrepresentation calculated to mislead the tenant in some important particular, as to the state and condition of the premises, the contract would be void, and the tenant be discharged from the rent. Ante, page 39, 40.

No person shall make an entry into lands or tenements, except in cases where his entry is allowed by law; and in such cases he shall not enter with force, but in a peaceable manner.

When a forcible entry is made, or when a peaceable entry is made and the possession unlawfully held by force, or when the lessee of lands or tenements, or a person holding under him, holds possession without right after the determination of the lease by its own limitation, the person entitled to the premises may be restored to possession in the manner hereinafter provided.

When a lease in writing is determined [in the manner provided in the 4th paragraph of preceding page,] the lessor and his assigns may be restored to the possession of the premises in like manner: *provided*, that when a suit is brought under this chapter to recover the possession by reason of such termination, if the tenant shall, four days at least before the return day of the writ, pay or tender to the landlord or his attorney the rent due, with interest thereon and all costs of suit, the lease shall be in force. But nothing herein contained [or in said paragraph] shall affect any other rights or remedies on the part of the lessor provided in the lease.

No restitution shall be made under the provisions of this chapter of any lands or tenements of which the defendant, or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the commencement of the suit, unless his estate therein is ended.

The person entitled to the possession of the premises may take from a justice of the peace, or police or justices' court, a writ in the form used for an original summons in common civil actions before such justices or courts, in which the defendant shall be summoned to answer to the complaint of the plaintiff, for that the defendant is in possession of the lands or tenements in question, describing them, which he holds unlawfully and against the right of the plaintiff, as it is said; and no other declaration shall be required.\*

The writ shall be served seven days at least before the return

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\* A lessor under an oral agreement to pay rent quarterly in advance, and upon condition, that when he fails to do so, he shall leave the premises, is liable, on his failure so to pay rent, to the landlord under [the above] process without previous notice. 1 Gray R. 571.

—ss.

*Commonwealth of Massachusetts.*

To the Sheriff of the said County of M. or either of his Deputies, or the Constables of the town of S. within the said County, or to any or either of them,  
Greeting:

We command you to summon A. B., of, &c. (if he may be found in your precinct) to appear before me, S. B., Esquire, one of the justices of the peace for the county aforesaid, at —, in S. on the — day of — at ten o'clock in the — noon; then and there to answer to the complaint of C. D. of, &c., for that the said A. B. on the — day of the date hereof, is in possession of, &c. which premises he holds unlawfully, and against the right of the plaintiff, as it is said, as shall then and there appear. And make return of this writ, and your doings therein. Dated the — day of —, A. D. 185. S. B., *J. of the P.*

day, and the suit shall be conducted like other civil actions before such justices or courts.

If it appears by default or on trial that the plaintiff is entitled to the possession of the premises, he shall have judgment and execution for the possession and for his costs.

If the plaintiff becomes nonsuit, or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

When judgment is rendered for the plaintiff for restitution, and the defendant appeals therefrom, or when the defendant removes the case [as is prescribed in cases of appeal from justices of the peace in other civil actions] he shall before such appeal or removal is allowed, recognize to the plaintiff with sufficient surety or sureties, to enter the action, to pay all rent then due, all intervening rent, and all damages and loss which the plaintiff may sustain by reason of the withholding of the possession of the demanded premises, and by reason of any injury done thereto during such withholding, together with all costs, until the restitution of the possession thereof to the plaintiff, in case the judgment from which the appeal is made shall be affirmed.

If the case is transferred at the request of the defendant upon any plea or suggestion by him that brings in question the title to the freehold, and if it appears to the court in which the action is determined, that the defendant originally entered on the premises under a lease from the plaintiff, or from any person under whom the plaintiff claims, or that he held them under any such lease, and that his said plea or suggestion was frivolous and intended for delay, the court shall cause a certificate thereof to be entered on the record, and the defendant shall thereupon be liable to pay double the yearly value of the demised premises from the time of the notice to quit the same.

The judgment in such action shall not be a bar to any action thereafter to be brought by either party to recover the premises in question, or damages for any trespass thereon.

Keeping a house of ill fame vacates the lease, at the option of the lessor.

When a tenant paying rent for real estate shall be taxed therefor, he may retain out of his rent one-half of the taxes paid by him; and when a landlord is assessed for such real estate, he may recover one-half of the taxes paid by him and his rent in the same action against his tenant; unless there is an agreement to the contrary.

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## RHODE ISLAND.

SEC. 1. No estate of inheritance or freehold, or for a term exceeding one year, in lands or tenements, shall be conveyed from one to another by deed, unless the same be in writing,

signed, sealed, and delivered, by the party making the same, and acknowledged before a senator, judge, justice of the peace, public notary, or town clerk, by the party or parties who shall have sealed or delivered it, and recorded, or lodged to be recorded, in the office of the town clerk of the town where the said lands or tenements do lie.—R. S. 1857, p. 335.

SEC. 2. All bargains, sales and other conveyances whatsoever, of any lands, tenements, or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for term of years, exceeding the term of one year, and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void, unless they shall be acknowledged and recorded as aforesaid; but the same between the parties and their heirs shall be valid and binding.—*Ibid.*

Keeping a house of ill fame makes void the lease at the option of the lessor.—R. S. 1857, p. 513.

SEC. 1. If any person who shall be seized of any real estate, for the term of his own life, or for the life or lives of any other person or persons, or as a tenant for years, shall commit or suffer any waste on such estate, he shall forfeit his estate so wasted, and double the amount of the waste so done or suffered; to be recovered in an action of waste by the person entitled to the next estate in remainder, or reversion, in the place so wasted.—p. 512.

SEC. 1. When complaint shall be made in writing, and under oath to a justice of the supreme court, of any unlawful and forcible entry into and detainer of any lands or tenements, or of any unlawful and forcible detainer of the same after a peaceable entry, he shall direct the sheriff or either of his deputies, to empanel a jury of twelve men, to inquire into such forcible detainer. If the verdict shall be, that the complaint is supported, the complainant shall have restitution of the premises with costs, if not supported, the defendant shall recover his costs, and no appeal shall be allowed.—R. S. 1857, p. 515.

Tenants by parol, of house, tenement, or messuage, or of farms and farming lands, from year to year, shall quit upon notice in writing from the *lessor* or *owner* given at least three months prior to the expiring of the occupation year. For any term less than a year, such tenants shall quit upon notice in writing from the lessor or owner given at least half the period of the term, not exceeding in any case three months, prior to the expiration of the same, at any return thereof. Like notice shall be given by the *tenant*, if he would be quit of the same, as is prescribed to be given by the lessor.—R. S. 1857, p. 514.

The time named in a definitewritten lease shall be the time of the termination thereof; and if there be no time of termination named therein, it shall be deemed a letting from year to year, and the like notice to quit shall be required both from landlord and tenant, as in case of letting by parol.—*Ibid.*

## CONNECTICUT.

**TITLE 57. SEC. 10.** No lease of any house or lands for life, or any term of years exceeding one year, shall be accounted good and effectual in law, to hold such houses and lands against any other person or persons whatever, but the lessor or lessors, and their heirs only, unless such lease be in writing, and subscribed by the lessor and attested by two subscribing witnesses, and acknowledged before a justice of the peace, and recorded at length in the records of the town where such estate lies.

**TITLE 58. CHAP. 6. SEC. 1.** Whenever the owner or lessor of any land, dwelling-house, or other building held under a lease, written or verbal, shall desire to obtain possession of the same at the expiration of the lease, or at any subsequent time he shall give notice to the lessee to quit possession of said land, house, or building, or any apartment of the same, at least thirty days before the expiration of the lease, or before the time when said lessee shall be required to quit possession; which notice shall be in writing, in the form following, to wit: "I hereby give you notice that you are to quit possession of the land, [house, apartment, store, &c., as the case may be] now occupied by you, on or before the [here insert the day, place, date and name.]" Of which notice, duplicate copies shall be made, one of which shall be delivered to the lessee, or left at his place of residence, in the presence of at least one credible witness. And if, at the expiration of the thirty days, the lessee shall neglect or refuse to quit his possession of the premises, any justice of the peace in the town in which the said leased premises shall be situated, shall have power, on complaint of the lessor, or owner, to issue a summons to the lessee, which shall be served at least six days before the time of trial, to appear before him to answer to such complaint: and also, to summon a jury of six disinterested freeholders of the town, to inquire whether the possessor is the lessee of the complainant, and holds over the term of the lease, and whether notice has been given to the lessee according to the provisions of this act, and said lessee holds possession after the expiration of the time therein specified. And in case the jury find these facts in favor of the complainant, the said justice of the peace shall render judgment for the complainant to recover possession of the said leased premises with his costs, and issue execution accordingly. But if the defendant shall show to the jury a title in himself, derived after the date of the lease from the lessor, or from any other person or persons, or if the jury should not find a lease, a notice given and a holding over as aforesaid, the defendant shall recover his costs.\*

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\* In case of forcible entry or detainer, the party ejected, or held out of possession, may make complaint to either of the judges of the county court, or to the justice of the peace in the county where such houses, lands or tenements are situated, and such judge or justice shall issue a summons to the party com-

SEC. 2. When any magistrate aforesaid, shall issue a summons for the purpose aforesaid, he shall take of the complainant a bond, with sufficient surety to the adverse party, to answer all costs and damages which the defendant may sustain in case the complainant shall fail to make his plea good.

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## NEW YORK.

Any landlord may recover a reasonable satisfaction for the use and occupation of any lands and tenements by any person under any agreement not made by deed.—2 p. 32.

Every grant in fee, or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest is intended to pass, &c., and if not duly acknowledged, previous to its delivery, its execution and delivery shall be attested by at least one witness or, if not so attested, it shall not take effect as against a purchaser or incumbrance, until so acknowledged, 2 p. 22.

Agreements for the occupation of lands or tenements, in the city of New York, which shall not particularly specify the duration of such occupation, shall be deemed valid until the first day of May next after the possession under such agreement shall commence; and the rent under such agreement shall be payable at the usual quarter days for the payment of rent in the said city, unless otherwise expressed in the agreement.—2 p. 29.

Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note, or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made or by some agent lawfully authorized.—2 p. 194.

Leases, for less than one year [or an assignment or surrender of a term of one year or less,] need not be in writing.

A lease for three years or longer, must be recorded in the county where the premises are situated, except in the counties of Delaware, Schenectady, Albany, Ulster, Sullivan, Herkimer, Dutchess and Columbia.—2 p. 47.

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.—2 p. 22.

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plained of, and if he do not appear, shall proceed in the same manner as if he were present.

Said judge, or justice, shall then make out a warrant under his hand, to the sheriff of the county, or his deputy, or either of the constables of the town where the injury complained of was done, commanding him to summon a jury of six men to try the case. No appeal is allowed from the judgment of such judge or justice. No action for forcible entry or detainer can be brought, unless within six months after making the entry.

The party aggrieved may recover treble damages and costs of suit, by action of trespass against the defendant, or defendants, if it be found by verdict of the jury, or otherwise in due form of law, that he, or they, entered into houses, lands, or tenements, by force, or after entry, held the same by force.—1 R. 142; 6 C. R. 80

If any lease be surrendered in order to be renewed, and a new lease be made by the chief landlord, such new lease shall be good and valid to all intents and purposes, without a surrender of all or any of the under leases derived out of such original lease so surrendered; and the chief landlord, his lessee, and holders of under leases, shall enjoy all their rights and interests in the same manner as if the original lease had been still continued, &c.—2 p. 29. [Modified by Law of 1846, see p. 82.]

Wherever there is a tenancy at will, or by sufferance, created by the tenant's holding over his term, or otherwise, the same may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom.—2 p. 30.

Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or, if the tenant cannot be found, and there be no such person residing on the premises, such notice may be served by affixing the same on a conspicuous part of the premises.—*ib.*

At the expiration of one month from the service, the landlord may re-enter or maintain ejectment, or proceed by law to remove such tenant, without any further or other notice to quit.—*ib.*

If a tenant shall give notice of his intention to quit the premises, and shall not deliver up the possession thereof at the time in such notice specified, he shall from thenceforward pay double the rent which he should otherwise have paid, and for so long a time as he shall continue in possession.—*ib.*

If any tenant for life or years shall wilfully hold over any lands or tenements after the termination of such term, and after demand made and one month's notice in writing, given in the manner hereinbefore prescribed, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay double the yearly value of the lands or tenements so detained, for so long a time as he shall hold over; and shall also pay all special damages whatever.—*ib.*

Any tenant or lessee, who shall remove his goods, either before or after any rent shall become due, for the purpose of avoiding payment, and every person who shall knowingly assist such tenant in such removal, or in concealing the goods so removed, shall forfeit to the landlord double their value.—2 p. 31.

Any person having any rent due upon a lease for life, or lives, may have the same remedy to recover such arrears, by action of debt, as if such lease were for years.—2 p. 32.

When a tenant for life, who shall have demised any lands, shall die on or after the day when any rent became due and payable, his executors, or administrators may recover from the under tenant the whole rent due; if he die before the day, &c., they may recover the proportion which accrued before his death.—*ib.*

When any certain services, or certain rent reserved out of any lands or tenements, shall not be paid or rendered when due, the persons entitled thereto may distrain for the same.—2 p. 31. [Modified by Law of 1846, see p. 82.]

Every tenant upon whom a declaration in ejectment, or any other process, proceeding, or notice of any proceeding, to recover the land occupied by him, or the possession thereof, shall be served, shall forthwith give notice thereof to his landlord, under the penalty of forfeiting three years' rent of the premises, &c.—2 p. 32.

Whenever any half year's rent, or more, shall be in arrear from any tenant to a landlord, if the landlord has a subsisting right by law to re-enter for the non-payment of such rent, he may bring an action of ejectment for the recovery of the possession of the premises; and the service of the declaration therein shall be deemed, and stand instead of a demand of rent in arrear, and of a re-entry on the demised premises.—2 p. 597.

If upon the trial of the cause, it shall be proved, or upon judgment by default, against the defendant, that the landlord had a right to commence such action, he shall recover possession of the premises and his costs.—*ib.*

If before judgment, the tenant make a tender to the landlord, or bring into the court where the suit shall be pending, all the rent in arrear, at the time of such payment, and all costs and charges incurred by the lessor, all further proceedings in the said cause shall cease.—*ib.*

At any time within six months after the landlord has taken possession of the premises, under any execution issued upon a judgment obtained by him, in any such action of ejectment, the lessee, his assigns or personal representatives, may pay or tender to the lessor, &c., or into the court where the suit shall be pending, all the rent in arrear, and all costs and charges incurred by the lessor; all further proceedings in the cause shall cease, and such premises shall be restored to the tenant, to enjoy according to the terms of the original lease.—*ib.*

If the rent and costs remain unpaid for six months after execution issued upon any judgment in ejectment shall have been executed, the lessee, &c., shall be barred from all relief or remedy in law or equity, and the landlord shall hold the premises,—*ib.*

The lessee may, within six months after execution is executed, file his bill for relief in a court of equity, and if relieved by court shall again hold and enjoy the premises.—*ib.*

If the lessor shall have entered into the actual possession of the demised premises, the court may direct that so much, and no more, as he shall really have made of the said premises during the possession thereof, or as he might, without wilful neglect, have made of them, be deducted from the amount of the rent in arrear to such lessor, and the costs of such ejectment;



and the complainant shall be required to pay the balance, before he shall be restored to the possession of the said premises.—*ib.*

No entry shall be made into any lands or other possessions, but in cases where entry is given by law ; and in such case only in a peaceable manner, not with strong hand, nor with multitude of people.—2 p. 599.

Where any such forcible entry is made, or peaceable entry, and the possession held by force, the person so forcibly put out, may be restored by making complaint in writing, with the affidavit, to the judge of the county courts of the same county.—*ib.*

If any person be ejected or put out of any lands or tenement, in a forcible manner, or being put out, be afterwards holden and kept out by force, or with strong hand, he shall be entitled to maintain an action of trespass and shall recover therein treble damages.—2 p. 432.

If any tenant, being in arrear for rent, shall desert the demised premises, and leave the same without sufficient goods thereon to satisfy the arrears of rent, any justice of the peace, &c. may, at the request of the landlord, and upon proof, &c., go upon and view said premises, and upon being satisfied that the premises have been so deserted, affix a notice in writing upon a conspicuous part of the premises, requiring the tenant to appear and pay the rent due, at some time in said notice specified, not less than five nor more than twenty days after the date thereof.—2. p. 603.

If at or within that time the tenant appear and deny that any rent is due, the proceedings shall cease. But if the tenant, or some one for him, shall not appear and pay the rent in arrear, and there shall not be sufficient distress on the premises, then such justice may put the landlord into possession, and the lease shall thenceforth become void. An appeal from the proceedings may be made by the tenant, within three months after possession is delivered.—*ib.*

Any tenant may be removed from any premises by any judge of the County Courts of the county, or by any mayor or recorder of the city where such premises are situated ; or if in the city of New York by the mayor, recorder, any one of the aldermen, special justice, justice of the Marine Court, or any one of the assistant justices of the said city, in the manner hereafter prescribed, in the following cases :

1. " Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

2. " Where he holds over without permission, after default in the payment of rent, &c. and a demand has been made of the rent, and three days' notice in writing, requiring the payment of such rent, or the possession of the premises shall have

been served by the person entitled to such rent, on the person, owing the same, in the manner prescribed for the service of the summons : which summons shall be served, either by delivering to the tenant to whom it shall be directed, a true copy thereof, and at the same time showing the original : or, if such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place, with some person of mature age, residing on the premises.

3. " Where the tenant or lessee of a term of three years or less, has taken the benefit of any insolvent act, or been discharged under any act for the relief of his person from imprisonment.

4. " Where he holds over, and continues in possession of any real estate which has been sold under an execution against him, after a title to such sale has been perfected. — [But no tenant under the second above subdivision can be so removed, where the unexpired term of his lease exceeds five years ; in such case the landlord's remedy is by ejectment.] — Any landlord may make oath in writing of the foregoing facts, describing the premises, and present it to one of the officers above named, whose duty it is thereupon, to issue his summons."—2 p. 604.

Amended by laws of 1849 and 1851, as follows, viz : Any person in possession may, on affidavit, deny the facts and submit to a jury. On receiving such affidavit such officer shall issue his summons requiring any person in possession of the premises, or claiming possession thereof, to show cause before such magistrate in not less than three nor more than five days, why said premises should not be delivered to the applicant.

When double or treble costs shall be awarded to any defendant, the same shall be deemed to belong to such defendant ; and the counsellors, attorneys, and other officers, witnesses and jurors in such action, shall be entitled to receive only the single costs allowed by law for their services.—2 p. 708.

Keeping a house of ill-fame vacates the house at the option of the landlord.

### LAWS OF 1846 AND 1847.

CHAP. 159. SEC. 1. No bill of exceptions hereafter to be taken on the part of the defendant, in any action of ejectment shall stay the proceedings therein for more than thirty days after the settlement of such bill, unless the party taking the same, shall, within that time, procure the judge who presided at the trial of the cause, or a justice of the supreme court, to certify on such bill, that he has read and examined the same, and that there is probable cause for staying the proceedings in the suit in which such bill of exceptions was taken, and serve a copy of such certificate on the attorney of the opposite party.

CHAP. 274. SEC. 1. Distress for rent is hereby abolished.

SEC. 2. The 12th, 13th, 14th, 15th, 16th and 17th sections of Title 4, Chapter 1, of the Second part of the Revised Statutes are hereby repealed.

SEC. 3. Whenever the right of re-entry is reserved and given to a grantor or lessor, in any grant or lease, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of any rent due, such re-entry may be made at any time after default in the payment of such rent, provided fifteen days' previous notice of such intention to re-enter, in writing, be given by such grantor or lessor, or his heirs or assigns, to the grantee or lessee, his heirs, executors, administrators or assigns, notwithstanding there may be a sufficiency of goods and chattels on the lands granted or demised for the satisfaction thereof. The said notice may be served personally on such grantee or lessee, or by leaving it at his dwelling-house on the premises.

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## NEW JERSEY.

The Revised Statutes of New Jersey provide that any person, or persons having rent in arrear, or due upon a lease for life or lives, may bring an action or actions for debt for such arrears of rent in the same manner as they might have done in case such rent was reserved and due upon a lease for years.—p. 85.

That where any tenant for life shall happen to die before, or on the day on which any rent was made payable, on any lease of lands or tenements, the executors, or administrators of such tenant shall recover of the under-tenant, or tenants, the whole, or such proportion of the rent as was due on the decease of the tenant.—*ib.*

Where the agreement is not by deed, the landlord, his heirs, or assigns may, nevertheless, recover a reasonable satisfaction for the lands or tenements occupied.—*ib.*

Landlord has a lien for rent on the goods and chattels on the premises; *provided* said arrears of rent do not amount to more than one year's rent. In case they do, then by paying landlord one year's rent the party may proceed to execute his process, as though the act had not been passed.

Tenant liable for holding premises after expiration of lease, and demand of possession made, to pay landlord double rent.

In case half a year's rent is in arrear, the landlord has power to enter and eject the tenant; and in case said lessee suffer judgment on said ejectment, he shall be forever barred and foreclosed from all relief in law or equity; but the mortgagee of such lease, who shall not be in possession, may, within six calendar months after such judgment, redeem such lease.

In case premises are deserted without payment of rent, two justices of the peace may put landlord in possession in the space of fourteen days, and declare the lease void. Proceedings of said justices to be examinable in a summary way by the justices of the Supreme Court.

TITLE 4, CHAP. 7, SEC. 17. In all cases where any tenant is, or may be entitled by law, to notice to quit the premises, by him

holden, in order to determine his tenancy, three months' notice to quit, as aforesaid, shall be deemed and taken to be sufficient.

**TITLE 17, CHAP. 1, SEC. 10.** No leases, estates, or interests, or term, or terms of year or years, or any uncertain interest, of, in, to, or out of any messuages, lands, tenements, or hereditaments, shall, at any time, hereafter, be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or his, her, or their agent, or agents, thereunto lawfully authorized by writing, or by act and operation of law.

According to the Revised Statutes of New Jersey, the grantees of lands, or of reversions, enjoy the same benefits as the original lessors.

The lessees of lands also have the same advantages against the grantees of reversions as against the original lessors.

In case of an action of ejectment brought against the tenant by the landlord, for non-payment of rent, if the tenant or tenants, his, her or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay, or tender to the lessor or landlord, his or her executors or administrators, or his, her, or their attorney, in that cause, or pay into the court where the same cause is or shall be depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued.

Forcible entries and detainers are cognizable by justices of the peace, and triable by a jury. Summons to be served six days before day of appearance therein mentioned,—judgment, restitution, and treble costs, if jury find party guilty.

If jury find against the said complainant, the said justice shall give judgment accordingly, with costs, and issue execution against the goods and chattels, and in want thereof, against the body of the said complainant.

### LAWS OF NEW JERSEY—1847.

Any tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, of any houses, lands or tenements, and the assignees, under-tenants, or legal representatives of such tenant or lessee, may be removed from such premises by any justice of the peace of the county where such premises are situated, in the manner hereinafter prescribed in the following cases:—

1. Where such persons shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his or her term, and after demand made, and notice in writing given, for delivering the possession thereof, by the landlord or his agent for that purpose.

2. Where such persons shall hold over after any default in the payment of the rent, pursuant to the agreement under which such premises are held, and satisfaction for such rent cannot be

obtained by distress of any goods, and a demand of such rent shall have been made by three days' notice in writing, requiring the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, upon the person owing the same.

Any landlord or lessor, his legal representatives, agents or assigns, may make oath in writing of the facts which, according to the preceding section, authorize the removal of a tenant, describing therein the premises claimed, and may present the same to any justice of the peace of the county where the premises are situated.

3. On receiving and filing such affidavit, such justice shall issue a summons, describing the premises of which possession is claimed, and requiring any person in possession of said premises, or claiming the possession thereof, forthwith to remove from the same, or to show cause before the said justice, at a certain place and time therein to be specified, not less than five, nor more than fifteen days, from the date of such summons, why possession of such premises should not be delivered to such claimant.

4. Previous to issuing such summons in a case of tenancy at will, or at sufferance, or from year to year, the justice shall be satisfied by due proof, that such tenancy has been terminated by giving notice in the manner prescribed by law.

5. The summons shall be served in the manner prescribed by the act constituting courts for the trial of small causes; the suit may be adjourned, and either party may demand and have a trial by jury of six men, according to the provisions of said act.

6. If, at the time appointed in the said summons, or at the time to which said suit may be adjourned, no sufficient cause be shown to the contrary, and it shall appear to the said justice, or jury, that the summons has been duly served, the said justice shall issue his warrant to any constable of the county, or marshal of the city or town, in which the premises are situated, commanding him to remove all persons from the said premises, and to put the said claimant into the full possession thereof, and to levy and make the costs out of the goods and chattels of such person or persons in possession.

7. The proceeding had by virtue of this act, shall not be appealed from, or removed by *certiorari*; but the landlord shall remain liable in an action of trespass for any unlawful proceedings under this act.

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## PENNSYLVANIA.

No leases for a greater length of time than three years are valid, unless in writing, &c.

If lessee holds over beyond the termination of his lease, the lessor may complain thereof, to any two justices of the city,

town, or county, where the demised premises are situated, and the lessee will be summoned to show cause why the leased premises should not be given up to the lessor.\*

Any person, or persons having rent in arrear or due upon any lease for life, or lives, or for one or more years, or at will, may distrain for the same after the determination of the said respective leases, *provided*, that such distress be made during the continuance of such lessor's title, or interest. — *General Laws, page 74.*

If any lessee for term of years, in the city and county of Philadelphia, shall remove from any demised premises without leaving sufficient property to secure the payment of at least three months' rent, or shall refuse to give security for the payment thereof, in five days after demand of the same, and shall refuse to deliver possession of such premises, the landlord or lessor may apply to any two aldermen, or justices of the peace within the city or county of Philadelphia, and make affidavit or affirmation of the fact, and thereupon the said aldermen or justices of the peace shall forthwith issue their precepts to any constable in the city or county, commanding him to summon such lessee to answer to such complaint on a day certain not exceeding eight nor less than five days; and if it shall appear that such lessee has removed from the premises without leaving sufficient goods and chattels to pay the rent, or given security for such payment, or has refused to deliver up possession of the demised premises, they shall enter judgment against such lessee, and the premises shall be delivered up to the lessor forthwith. *Provided, always*, that at any time before such writ of possession is actually executed, the lessee may render the said writ of non-effect by paying to the said constable for the use of the said lessor, the rent actually due and in arrear, and the costs of the proceeding, of all of which doings the said constable shall make return to the said aldermen or justices, within ten days after receiving of the said writ. *And provided, further*, that no writ of possession shall be issued by the said aldermen, or justices for five days after the rendition of judgment, and if within the said five days the tenant shall recognize for the rent and the costs that have and may accrue, up to the time of the final judgment, then the tenant shall be entitled to an appeal to the next court of common pleas. *And provided, further*, that nothing herein contained shall prevent the issue of a *certiorari* with the usual form and effect. — *General Laws, page 381.*

The goods and chattels being in or upon any messuage lands or tenements, which are or shall be demised for life or years, or

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\* The affidavit of the landlord is sufficient to found the proceedings on.—4, W. & S. 120, act 3. S. & R. 102.

There must be sufficient time allowed to procure witnesses, or the proceedings will be quashed.—1 Yeates, 49.

That the term is fully ended must appear in the proceedings, or they are defective.—2 S. & R. 490.

otherwise taken by virtue of an execution and liable to the distress of the landlord, shall be liable for the payment of any sums of money due for rent at the time of taking such goods in execution. *Provided*, that such rent shall not exceed one year's rent.\*

Officers selling, shall first pay rent and afterwards apply surplus to the execution, deducting so much for costs as he would be liable to pay in case of a sale under distress. — *General Laws*, page 734.

## MARYLAND.

All removals of personal property owned by tenants and removed by them or their order from the premises, when rent shall be due, or about to become due, if removed within thirty days before the rent will become due, shall be considered a clandestine removal, and the property may be followed and distrained in the same manner as if it were found on the premises rented, if not sold to a *bona fide* purchaser without notice. — 1 *Laws of Maryland*, 919. (1826, ch. 266.)

Costs of distress made by constables to be borne by tenant. — 1 *Ibid.* 769. (1821, ch. 162.) No spinning wheel or loom, which shall be loaned or hired out to any person, shall be seized or taken by distress, for any house rent or debt due by such person. — 1 *Ibid.* 621. (1813, ch. 135.)

Where lands are rented for a portion of the crop, the produce cannot be sold by sheriff or other officer, by virtue of any process issued against the tenant, so as to deprive the landlord of his share; but it must be sold subject to the claim of the landlord. — 2 *Ibid.* 1021. (1831, ch. 171.)

If the tenant fails to deliver to the landlord his share of the crops, according to agreement, the landlord may levy a distress for the same, the value of his share in money being ascertained by two disinterested persons sworn as appraisers. The tenant has his election at any time before the property distrained is sold under such distraint, to deliver the rent, if grain, a portion of the crops, to the landlord, or to pay him the said estimated value, together in both cases, with the expenses of said distraint; whereupon all proceedings shall cease. The right to replevin the property distrained is also reserved to the tenant. — 2 *Ibid.* 102. (1831, ch. 171.)

Landlords before making distress for rent due must make oath, before some justice of the peace in the county where premises lie, or where the landlord or his agent resides, of the amount of money or quantity of produce due, and what, if any, credits have been given. — 2 *Ibid.* 1141. (1834, ch. 192.)

\* If the landlord has distrained for part of this year's rent, and the goods have been replevied, he can only claim the rent accruing subsequent to the distress 4 *Watts* 42.

The widow holding an interest in the land of her deceased husband under the intestate law, is entitled to be paid one year's arrears. — 2 *Miles* 69.

When landlord gives notice to sheriff or constable about to sell goods of his tenant that rent is due him, he must append to such notice or claim an affidavit of the amount of the rent claimed to be due. — Ibid. § 2.

Every warrant authorizing any bailiff to levy a distress for rent, must have appended an account of the money claimed to be due and in arrear, or the quantity of produce due, and an affidavit thereon. — Ibid. § 3.

In case of distress for rent the officer cannot summon more than two appraisers of property distrained, and the compensation of the officer for summoning and swearing each appraiser shall be twenty cents, and the compensation of each appraiser thirty cents. — Ibid. § 4.

All claims for rent in arrear, against deceased persons, for which distress may be levied by law, after the death of the deceased, shall have preference over all other claims, except such as now have preference over claims for rent in arrear, without the levying of distress therefor. — 2 Ibid. 1237. (1836, ch. 192.)

Where tenants having power to determine their leases upon notice, hold the premises after the time they notify for quitting them, they are liable to pay double rent. — 2 Ibid. 578.

Rents may be recovered from under tenants, where tenants for life die before rent is payable. — 2 Ibid. 577.

Landlords may distrain and sell goods fraudulently carried off the premises, within thirty days from such carrying off, unless they have been sold to a person having no knowledge of the fraud. Landlords may break open houses to seize goods fraudulently secured therein. — 2 Ibid. 573.

Landlords may distrain stock or cattle on the premises for arrears of rent; also take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever growing on any part of the premises, and the same cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premises; and for want of such places, then in any other barn or proper place which such landlords may procure as near as may be to the premises, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which they are taken; the appraisement to be made when cut, gathered, cured, and made, and not before. — 2 Ibid. 574. Tenants to have notice of the place where the distress is lodged within a week after the lodging thereof. — 2 Ibid. 574.

Distress of corn or other products, above enumerated, to cease if rent be paid before it is cut. — Ibid.

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### SOUTH CAROLINA.

At the end of a written lease, where a demand of possession has been made in writing and refused, in ten days, two justices of the peace may cause a jury to be summoned, and the parties



to appear before them, and the tenant to show cause why the lessor should not be put in possession. If the lessor prevails, the justices issue their warrant commanding the sheriff forthwith to put the lessor in possession of the premises, and levy the expenses on the tenant. Sheriff must, within ten days after receiving the warrant, put the lessor in possession, and for that purpose may break open doors if resisted. — 5 vol. Statutes, 676; 6 Ibid. 68.

Tenant not to make alterations or remove buildings erected upon the leased premises without permission first had in writing, under pain of forfeiting the residue of the lease: forfeiture to be ascertained by justice of the peace or of the quorum, with juries as stated above for the removal of lessee.—6 Ibid. 68.

No verbal lease can give a right of possession for a longer term than one year from the time of entering on the premises, and all such cases shall be understood to be for one year, unless it be stipulated to be for a shorter term.—6 Ibid. 67.

Every lease or written agreement, for renting of lands and tenements, absolutely ends at the period therein stated, and neither landlord nor tenant is bound to give notice.—6 Ibid. 67.

No payment made in anticipation of rent, for a longer period than twelve months, shall be considered a valid discount against the claims of third persons.—6 Ibid. 67.

No written lease for a longer period than twelve months is valid against the claims of third persons, unless recorded in the office of the register of mense conveyances, at least within three months from the execution.—6 Ibid. 67.

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## LOUISIANA.

If the renting of a house or other edifice, or of an apartment, has been made without fixing its duration, the lease shall be considered to have been made by the month. In such case, the party desiring to put an end to it, must give notice in writing to the other, at least fifteen days before the expiration of the month which has begun to run.

If the tenant of a house or room continues in possession a week after his lease expires, without any opposition by the lessor, the lease is presumed to continue, and he cannot be removed without receiving the fifteen days' notice referred to above.

If no time is specified in the lease of a farm, it is presumed to be for a year. If, after the lease of a farm has expired, the farmer remains in possession for a month, without any step having been taken by the lessor, or a new lessee, to cause him to deliver up the possession of the estate, the former lease shall continue, with all its clauses and conditions, for one year from its expiration.

When notice has been given, the tenant, though remaining, cannot pretend that the lease has been tacitly renewed.

*Landlord.*—The lessor is bound to deliver the thing leased to the lessee,—to maintain it in a condition such as to serve the use for which it was hired,—to secure the lessee in the peaceable possession of it during the term,—to deliver the thing in good condition and free from any repairs.

The lessor ought to make, during the term, all the repairs which may accidentally become necessary ; except such as the tenant is bound to make, which will be hereafter stated. If the lessor fails to make such necessary repairs, upon being called on by the lessee, the lessee may cause the repairs, if indispensable, to be made, and deduct the price, if just and reasonable, from the rent due.

The lessor guarantees the lessee against all the vices and defects of the thing, which may prevent its use, even though the lessor was ignorant of their existence at the time the lease was made, and even if they have arisen since without the fault of the lessee ; and if the lessee suffer loss from the defect, the lessor must indemnify him.

If the lessee be evicted, the lessor is answerable for the damage and loss which he sustains by the interruption of the lease. If the thing be totally destroyed by an unforeseen event, or be taken for purposes of public utility, the lease is at an end. If it be only destroyed in part, the lessee may demand a diminution of the rent, or a revocation of the lease. In neither case has he any claim for damages.

The lessor cannot make any alteration in the premises during the lease.

If, without fault of the lessor, the premises cease to be fit for the purpose for which it was leased, or if its use be much impeded, as if a neighbor, by raising his walls, intercepts the light of the house, the lessee may, according to circumstances, obtain the annulment of the lease, but has no claim for indemnity.

The lessee, unless the contrary is stipulated, is to pay the taxes, rents, and other real charges.

The lessor is not bound to guarantee the lessee against disturbance caused by persons not claiming any right of action for damage sustained against the person causing it.

If the person committing the acts of disturbance, pretend to have a right to the thing leased, or if the lessee is cited to appear before a court to answer to the complaint of the persons thus claiming the whole or a part of the thing leased, or claiming some species of services on the same, he shall call the lessor in warranty, and shall be dismissed from the suit, if he wishes it, by naming the person under whose right he possesses.

The lessor has for the payment of rent, and other obligations of the lease, a right of pledge on the moveable effects of the lessee, which are found on the property leased. In the case of farm estates, this right embraces every thing that serves for the abors of the farm, the furniture of the lessee's house, and the

fruits produced during the lease of the land ; and in the case of houses and other edifices, it includes the furniture of the lessee, and the merchandize contained in the house, or apartment, if it be a store or shop. This right also extends to the effects of the under-tenant, so far as he is indebted to the principal lessee at the time ; and a payment made by the under-tenant to his principal, in anticipation, does not release him from the owner's claim.

This right affects the movables of third persons, when their goods are contained in the place by their own consent ; but it is not so when the movables are only accidentally or, transiently in the building—as baggage in an inn, or goods in a workshop to be made up or repaired, or in an auction-room to be sold.

The lessor may seize the movables before the lessee takes them away, or within fifteen days after they are taken away, if they continue the property of the lessee, and can be identified.

*Tenant.*—The lessee is bound to use the thing as was intended by the lease. And if he makes another use of it, and the lessor is injured thereby, he may obtain the dissolution of the lease ; and the lessee shall, in such case, pay the rent until the thing is again leased, and all damage sustained by the owner from his misuse.

The lessee is bound to pay rent at the terms agreed on, and he may be expelled if he fails to pay it when due.

If the lessee remains after he has had the notice required by law, to quit, he may be summoned before a justice of the peace, and condemned to depart ; and if he fails to obey within three days after notice of judgment, the justice may order him to be expelled, and his property removed by the constable at his expense.

The constable may force the doors and windows if shut, and seize and sell such portion of the lessee's effects as may be necessary to pay costs.

If, in the lease of a farm, the premises are stated to be of greater extent than they are, the lessee may claim an abatement in the rent.

If an inventory is made at the time of the lease, stating the condition of the things leased, the lessee must return the things in the same condition, reasonable wear and tear and unavoidable accidents excepted. If no inventory be taken, then the things are supposed to have been delivered in good order, and must be so returned, wear and tear and unavoidable accidents excepted.

The lessee is only liable for losses and injuries occasioned by his own fault, or that of the members of his family, or his sub-lessees. He is liable for loss by fire only when it is occasioned by the fault of himself or his family.

The farmer must prevent encroachments, and in case of any, must inform his landlord, otherwise he will be liable in damages.

If a slave become sick, or run away, he must notify the owner, or he will be liable.

The lessee may assign or underlet the premises, unless the contrary is expressly stipulated.

The lessee may remove improvements and additions made by him, provided he leaves the premises in the state he received them; but if they are made with lime and cement, the lessor may retain them on paying a fair price.

*Repairs.*—The lessee is bound to make such repairs as it becomes necessary to make—to the hearth, chimney-backs, and chimney-casings,—to the plastering of the lower part of interior walls,—to the pavement of rooms, when it is partially broken, but not when it is in a state of decay,—for replacing window-glass accidentally broken, but not when broken in the greatest part by a hail storm, or other inevitable accident,—to windows, shutters, partitions, locks, and hinges, and things of that description, according to the custom of the place.

The cost of repairs made necessary by unforeseen events or decay, must be borne by the lessor, though such repairs are of the nature of those usually done by the lessee.

The cleaning of wells and privies shall be at the expense of the lessor.

If during the lease the premises want repairs, and those repairs cannot be postponed until the lease expires, the tenant must suffer such repairs to be made, whatever may be the inconvenience to which he is subjected thereby. But if such repairs continue for more than one month, the price of the rent shall be lessened in proportion to the time occupied in repairing, and to the parts of the tenement of the use of which he has been deprived. And the whole rent is to be remitted, if the tenant is obliged to leave the house or the room, and take another house, while the repairs are being made.

*Dissolution of the Lease.*—The lease may be dissolved by the destruction of the premises; by the neglect of either party to fulfil their engagements; but not by the death of the lessor or the lessee; nor by the sale of the premises by the lessor; for the purchaser cannot turn out the tenant, unless the contrary is stipulated in the lease.

If it was agreed that in case the lessor sold during the term, the purchaser might take immediate possession, and if no indemnification had been stipulated, then the lessor shall pay the evicted lessee; if the thing leased be a house, shop or room, a sum equal to the rent for the time a tenant of such premises is entitled to notice, which is, as we have seen, at least fifteen days before the end of the month which has begun to run; if it be a farmer that is evicted, the indemnification to be paid him by the lessor is one-third of the price of the rent during the time which has yet to elapse. The purchaser cannot exercise this right without giving the fifteen days' notice, in the manner

stated before; and if the lessee be a farmer, he shall have one year's notice; and previous to the expulsion, the tenant must be paid the indemnification stated above, either by the lessor or the purchaser.

If the letting was not by written lease, the purchaser is not liable to give any indemnification.

If the lessor, in the contract of sale, reserves the right of redemption, the purchaser cannot turn out the tenant, until the estate has become absolutely his.

The destruction of the whole or a part of the crops by accident, presents no case for an abatement of rent, unless the accident was of such an extraordinary nature that it could not have been foreseen at the time the contract was made,—as loss by the ravages of a war not anticipated when the contract was made; but in such case the loss must equal in value one-half of the crop, to entitle the tenant to an abatement of the rent. The tenant is entitled to no abatement if the loss happens after the crop is severed from the ground, unless the lessor is to have a portion of the crop, in which case it would seem the lessor must bear his share of the loss.

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## MISSOURI.

Tenant giving notice of intention to quit, and failing to do so, shall be liable to double rent, during the time he shall continue in possession. Tenants holding over their term, after demand and notice in writing given, requiring possession, shall be liable for double rent for the time they shall keep possession.

No tenant for a term not exceeding two years, or at will, or by sufferance shall assign the whole or part of his interest, without the assent of his landlord. If any tenant violate preceding section, landlord may, after giving ten days' notice to quit possession, enter and take possession, and oust the tenant, by the proper proceedings as hereinafter stated.

Either party may terminate a tenancy from year to year by giving notice in writing, three months next before the end of the year. A tenancy at will, or by sufferance, or for less than one year, may be terminated by one month's notice in writing.

Notice to quit not necessary from a tenant whose term is to end at a certain time, or when by special agreement notice is dispensed with.

Landlord may recover for use and occupation, under an agreement not made by deed.

Landlord shall have a lien upon the crop grown on demised premises, in any year, for the rent that shall accrue for such year, to continue for eight months after such rent shall become due.

Whenever a half year's rent or more, is in arrear, landlord may re-enter, and bring an action to recover possession of premises. If the tenant, before judgment, tender to the landlord, or

bring into court, all the rent then in arrear, and all costs, all further proceedings shall cease.

Property exempt from execution shall be also exempted from attachment for rent, except the crop grown on the premises.

In all cases, if rent is not paid, as agreed, landlord may recover possession, after demand of payment, by filing a statement, verified by affidavit, with any justice of the peace, in the township, or if in St. Louis with any justice of the peace in the ward in which the property is situated, setting forth the terms, the amount of rent due, that the same has been demanded, and payment not made, and describing the property; and thereupon such justice shall issue a summons directed to the tenant, which summons shall be executed at least five days before the return day thereof. Upon return of summons executed, the justice shall render judgment, and issue execution, commanding constable to put landlord into immediate possession, and he shall deliver the premises within five days from the time of receiving such execution.

Demand of rent shall be deemed good, when made at any time after the said rent becomes due according to the time of the agreement, whether by written lease or otherwise.

Before such proceedings are commenced, the plaintiff, or his agent, shall make a demand of rent, as provided; and at the time of making the demand shall exhibit to the tenant, the deed under which he claims title, and if then, payment is refused, the owner may commence his action as aforesaid.

## ILLINOIS.

Reasonable rent may be collected for lands held without special agreement.

Persons holding over by collusion with tenant, obliged to pay double rent.

Tenant not quitting premises, according to notice by him given, to pay double rent.

If half a years' rent be due, landlord may commence an action of ejectment. The effect of judgment, in such action, is to destroy the lease. If tenant pays arrearages and costs, suit to be discontinued.

Every tenant, who shall at any time be sued on ejectment, by any person other than the landlord, shall give the landlord or his attorney, notice, under penalty of forfeiting two years' rent of the premises in question.

SEC. 8. Every landlord shall have a lien upon the crops growing, or grown upon the demised premises, in any year, for rent that shall accrue for such year.

In case the tenant shall abandon the premises, landlord may seize the crops growing thereon, before the rent is due. He

may cause crops so growing to be cultivated and perfected, until the rent agreed upon becomes due, when it shall be lawful for such landlord, or his attorney, to dispose of the same. *Provided*, that such tenant may, at any time, redeem such property, before the rent is due, by tendering the rent agreed on and all reasonable expenses attending the same, for care, cultivation and husbandry, as aforesaid, or replevy the same, as in case of seizure, where the rent is due.

## I N D I A N A .

Lease for three years or more must be in writing, and recorded within ninety days.

[From the Revised Statutes, Vol. II, 1852.]

Estates at will may be determined by one month's notice in writing delivered to the tenant.

A tenancy at will must be created by express contract. All general tenancies, in which the premises are occupied, by the consent of the landlord, either express or constructive, shall be deemed tenancies from year to year.

Executors and administrators shall have the same remedies to recover rents, and be subject to the same liabilities to pay them as their testator and intestates.

The occupant without special contract, of any lands, shall be liable for the rent, to any person entitled thereto.

All tenancies from year to year, may be determined by at least three months' notice given to the tenant, prior to the expiration of the year; and in all tenancies which by agreement of the parties, express or implied, are from one period to another of less than three months' duration, a notice equal to the interval between such periods shall be sufficient.\*

If a tenant at will, or from year to year, or for a shorter period, neglect or refuse to pay rent when due, ten days' notice to quit shall determine the lease, unless such rent be paid at the expiration of said ten days. †

Where the time for the determination of a tenancy is specified in the contract, or where a tenant at will commits waste, or

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\*Forms of notices to quit in case of a tenancy from year to year:

To A. B.—You are hereby notified to deliver up to me, at the expiration of the current year of the tenancy, the possession of the following described premises, [here describe them] now held by you, of me.

Sept. 20, '52.

C. D.

To A. B.—You are hereby notified to deliver up to me, at the expiration of three months from the time of receiving this notice, the possession of the following premises, [here describe them] now held by you, of me.

Sept. 20, 1852.

C. D.

†Form of a ten days' notice:

To A. B.—You are hereby notified to deliver up to me, at the expiration of ten days from the time of receiving this notice, the possession of the following premises, [here describe them] now held of me by you as tenant, unless the rent due for said premises is paid within that time.

Sept. 20, 1852.

C. D.

is at sufferance, and where the relation of landlord and tenant does not exist, no notice to quit shall be necessary.

Notice, as required in the preceding sections, may be served on the tenant, or if he cannot be found, by delivering the same to some person of proper age and discretion, residing on the premises, having first made known to such person the contents thereof.

Sub-lessees shall have the same remedy upon the original covenant against the chief landlord, as they might have had against their immediate lessor.

A landlord, after legal notice, or otherwise, can obtain possession of lands, unlawfully held by tenant, by making complaint before a justice of the peace, who shall summon such tenant to appear before him in not less than five nor more than fifteen days. Where notice is required by law, a copy and proof of service is necessary. If verdict be for plaintiff judgment shall be rendered that he have complete possession; and damages and costs shall be levied on goods of defendant, up to the time of trial; and the writ of delivery be forthwith executed.

Either party may appeal, as in other cases before justices, and bonds securing damages and costs be given by appellant.

#### WISCONSIN.

All estates at will, or by sufferance, may be determined by either party, by three months' notice given to the other party, and when the rent is payable at periods less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

No person shall make forcible entry into lands.

On complaint in writing to any justice of the peace of any forcible entry or unlawful detainer, he shall issue his summons to bring the person complained of before him in six and not more than ten days. Either party may demand a trial by jury.

If upon trial the defendant be found guilty, judgment shall be entered for restitution of the premises, and a fine imposed not exceeding one hundred dollars, with the costs. The complainant shall also be entitled to treble damages, with costs of suit; but not against any person who has had quiet possession three whole years next before the entering of the complaint.

When any person shall hold over any lands or tenements, after termination or contrary to the conditions or covenants of the lease, or after any rent shall become due and remain unpaid for the space of three days, the lessor shall make demand in writing of such tenant, that he shall deliver the possession of the premises, and if the tenant shall refuse or neglect for the space of three days after such demand, to quit the premises or pay the



rent, complaint may be made to any justice of the peace, who shall proceed to try the same in the same manner as in other cases: Provided that in all cases mentioned in this section, no fine shall be imposed upon the tenant.

The complainant shall be entitled to treble damages from the time of notice to quit the premises, and until that time damages only. If either party shall feel aggrieved by the decision of the justice or jury, he may appeal within ten days, by giving a bond with two sureties, to pay all costs of such appeal, and abide such order as the court may make therein, and pay all rent and other damages, justly accruing to said complainant during the pendency of such appeal.

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### OHIO.

Leases of school or ministerial lands, for more than ten years, and all other leases of lands exceeding three years, must be signed, sealed, and acknowledged, in the presence of two witnesses, who shall attest the same, and it shall also be acknowledged before a judge, justice of the peace, mayor, or other presiding officer of an incorporated town or city, and be recorded within six months from the date thereof. S. of O. p. 267.

No leases, estates, or interests, either for freehold, or term for years, shall at any time be assigned or granted, unless by deed, or note in writing, signed by the party so assigning or granting the same, or their agents, or attorney.

[Forcible Entry and Detainer. Code of Procedure, 1853.]

Any justice, within his proper county, shall have jurisdiction in cases of unlawful and forcible entry into land, tenements, &c., and when he finds that such unlawful and forcible entry has been made, and that the land, or tenements are held by force, or that the same, after a lawful entry, are held by force, then said justice shall cause the party complaining to have restitution thereof.

Proceedings may be had in all cases against tenants holding over their terms, &c., and in cases where the defendant is a settler, or occupier of lands or tenements, without color or title, and to which the complainant has the right of possession.

The party who commences the action must notify the adverse party to leave the premises, which notice must be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

Complaint in writing, describing the premises and setting forth the cause of complaint, must be filed with the justice, before he issues his summons. The summons shall state the cause of complaint, and time and place of trial, and shall be served three days before the day of trial. If defendant does not appear, the justice shall try the cause as though he was present. No continuance shall be granted for a longer pe-

riod than eight days, unless defendant gives security for the rent that may accrue, if judgment be rendered against him. If the suit be not continued, place of trial changed, or neither party demand a jury upon the return day of the summons, the justice shall try the cause. If he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; but if he find the complaint true he shall render a general judgment against the defendant and in favor of plaintiff, for restitution and costs.

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### MICHIGAN.

Lease for one year or more must be in writing.

Whenever a tenant of any land for a less term than twenty-five years shall be assessed to work on the highway for such land, and shall perform such work, he shall be entitled to a deduction from the rent due, or to become due from him, for such land, equal to the full amount of such assessment, unless otherwise provided between such tenant and his landlord.

In all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by landlord to tenant, shall be sufficient to determine the lease.

A widow may remain in the dwelling-house of her husband one year after his death.

All estates at will may be determined by either party, by three months' notice in writing for that purpose, given to the other party; and when the rent is payable at periods less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the days of payment.

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### IOWA.

*Code of Iowa.* Three months' notice in writing is necessary to be given by either party before he can terminate a tenancy at will. But where rent is reserved, payable at intervals of less than three months, the length of notice need not be greater than such interval between the days of payment. In case of tenant's occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of April.

A tenant wilfully holding over the term, and after notice to quit, shall pay double rent for the time he holds over. A landlord has a lien for his rent upon the crops grown upon the premises, as well as on the tenant's personal property used on the premises.

In case of holding over by tenant, or for non-payment of rent, three days' notice to quit must be given to tenant in writing. If possession be not given, application by petition, in writing, and sworn to, must be made to a justice of the peace, who shall require the tenant to appear before him in not less than two nor more than six days from the time of notice.

Leases exceeding one year must be in writing.

## K E N T U C K Y .

1. A conveyance of greater estate than tenant has shall not work a forfeiture but shall pass all the estate the tenant has.

2. No tenant for less than two years shall assign his interest or part thereof without written assent of landlord.

3. If tenant shall violate the foregoing provision, the landlord may, after giving ten days' notice, oust the tenant or sub-tenant.

4. Either party may terminate a tenancy from year to year, by giving three months' notice if in town, or six months' notice if elsewhere.

5. Tenancy at will or by sufferance may be terminated by one month's notice in writing from landlord to tenant requiring him to remove.

6. If tenant after giving notice of intention to vacate premises shall not remove, the landlord may recover double rent.

7. The same rule to apply to tenant whose term is to end at a time certain, or to whom by special agreement no notice was to be given.

Rent reserved in money may be recovered by distress. If payable otherwise, to be recovered by action. Where contract is not by deed the landlord may recover reasonable rent.

Landlord shall not issue his own distress warrant, but justice, judge, &c., where property lies, may issue warrant to constable or sheriff, upon landlord's oath of amount due, and the officer may take personal estate, and also of the sub-tenant on the premises. If tenant has removed his property to another county the distress may be issued to that county. When tenant who shall be liable to pay rent (whether in money or otherwise if the rent will be due within one year thereafter) intends to remove, or is removing, or has within fifteen days removed his property from the leased premises, landlord may on oath state the facts, and on giving bond to indemnify the tenant, if wrongfully issued, may have a writ of attachment for the rent against personal property of tenant.

All amounts less than \$50. exclusive of costs and interest shall be returned before a justice of the peace. All amounts exceeding \$50. before the circuit court.

If landlord dispose of the property rented, his assignee or vendee may recover the rent for the balance of the term.

Rent may be recovered of lessee or other person owing it, or his assignee, or under-tenant, or the representative of either, in the manner before mentioned, for all time occupied by them.

Distress shall be limited to within six months after rent becomes due.

Distress or attachment may be levied on all personal property of lessee, or his assignee, or under tenant, found on the premises, or that may have been removed within fifteen days.

If such property be subject to valid liens of creditors, only the interest of such tenant, &c., may be taken.

Landlord may have a lien on such produce of the farm or other premises rented, and on the furniture and fixtures of lessee or under-tenant, and on other personal estate not acquired after he takes possession of premises; but such lien shall not be for more than one year's rent, nor for rent due more than four months. Landlord's lien shall not extend beyond fifteen days after the property has been removed from the premises, nor against a purchaser in good faith.

Property exempted from execution shall also be exempted from distress or attachment for rent.

Property taken on distress shall be advertised same as on execution, and so much sold as may be necessary to pay arrearages and costs, to highest bidder on a credit of three months, the officer taking bond with security of purchaser for sale money. If said bond be not paid at maturity, the clerk of the circuit court may issue execution on the same, directed to the sheriff of any county plaintiff may designate. Distress may be replevied by defendant giving bond with security, whereupon the property shall be given up. If said bond is not paid, the clerk may issue execution on the same, as before.

If property distrained for rent be not due, or accruing, or taken under attachment without good cause, the owner may recover double damages.

## T E N N E S S E E .

When any debt shall be contracted to become due for rent, whether by note, account, or otherwise, the amount to become due shall be a lien on the crop growing or made on the premises, and shall have precedence over all other debts, till debt is discharged. *Provided*, said lien shall only continue three months from time due.

Landlord has a lien on crop, under the above act, whether raised by his lessee or sub-lessee under his tenant, whether due by note or otherwise. The lien attaches to the crop although the sub-lessee may have given a note to the tenant, or paid him for rent. 4 Yerg. 456.

Before a landlord can maintain a suit against the purchaser of the crop, raised by his tenant, he must first obtain judgment against the tenant for the amount of rent due him. 6 Yerg. 267.

If any tenant for term of life, years, or other person shall be in possession of lands or tenements, and shall wilfully and without force hold over after demand and notice in writing for delivery of possession thereof, by the landlord, lessor, or the

person to whom the reversion of such lands or tenements belong, his agent or attorney, then such person holding over shall be guilty of an unlawful detainer.

To constitute a tenant guilty, who holds over against his landlord, under the above section, there must have existed a contract of rent or lease for a definite period, and the tenant must hold over after receiving written notice to surrender possession. M. & Y. 255.

The above section having limited no time at which a written notice to quit shall be given, if demand of possession be made, and written notice be given for the delivery, and the tenant refuse to surrender, the same may proceed at any time. 5 Y. 217.

If a party agree to surrender premises when demanded, and upon demand made, refuse to surrender, this will be an unlawful holding. 6 Y. 431.

Where one is by agreement to surrender on demand, he is not entitled to notice.

Persons complained of for forcible entry and detainer, must give security for costs.

No warranty results by implication of law, as to the continuing condition of property demised by lease. The only implied warranty is as to title, and any acts by or under the landlord, which could affect the use of the property. Against every other event or contingency the tenant must provide by express stipulation, in order to exonerate himself from the payment of rent. 1 Sneed's R. 613.

## A R K A N S A S .

Tenant giving notice of intention to quit the premises, and failing to do so, to pay double rent thereafter. Persons holding over, after expiration of term, and thirty days' previous notice in writing given, requiring possession thereof, shall pay double rent.

Landlord may recover for use and occupation under an agreement not made by deed. In such action a *parol* demise, and certain rent reserved, to be evidence; and for lands, &c., held without special agreement for rent, the owner may recover compensation for use and occupation.

Landlord to have a lien upon the crop grown upon demised premises in any year for rent, that shall accrue for such year, to continue for six months after such rent shall become payable.

Whenever a half year's rent or more is in arrear, landlord, if he has a subsisting right by law to re-enter for non-payment of rent, may bring an action to recover possession. The ser-

vice of a summons in such action shall stand instead of a demand, and of a re-entry of the demised premises.

If, on trial, it be proved, or upon judgment by default it appears to the court, by affidavit, that the plaintiff had a right to commence such action, he shall have judgment to recover the possession of such demised premises and costs of suit.

If the defendant before judgment is given, tenders to the landlord or brings into court, all rent in arrear, and all costs, all further proceedings in the action shall cease.

Leases for a longer term than one year must be in writing.

All leases not put into writing and signed by the parties or their agents, shall have only the effect of leases at will, and shall not be deemed to have any greater force than as leases for the term of one year.

No lease for a term exceeding one year shall be assigned, granted or surrendered, unless it be by deed or notice in writing, signed by the party so assigning, granting, &c.

## A L A B A M A .

No leasehold estate can be created for a longer term than twenty years.

No execution must be levied on goods or chattels, in possession of and upon the premises of a tenant, held by lease for one or more years, until the rent due or to fall due during the current year is paid or tendered to the landlord, his agent or attorney; and the sheriff executing the writ must levy and sell, as well for the repayment of the rent so tendered as for the satisfaction of the execution. A levy may be made upon the growing crop when there is no other property of the defendant known to the sheriff, but no sale must be made until the crop is gathered. It is the duty of the sheriff, at the request of plaintiff, to employ hands to gather the crop, unless the defendant offer to do so, and when sold the proceeds must be applied, first, to repay the cost of gathering it, and afterwards to the satisfaction of the execution.

Tenant in possession, claiming under another, only liable for rent in arrear at the time of suit brought, and that which may accrue during the continuance of his possession.

A reasonable satisfaction may be recovered for the use and occupation of land : 1. Where there has been a demise by deed, or by parol, and no specific sum agreed on as rent. 2. When, after a demise the tenant holds over without any further agreement for rent. 3. When the tenant has been let into possession of the lands, which from the act of the tenant has not been consummated. 4. When the tenant remains on the land by the sufferance of the owner.

A landlord has a lien on the crop grown on rented land for rent for the current year, and is entitled to process of attachment whether the rent be due or not at the time the attachment is sued out:—1. When the tenant is about to remove crop from the premises without paying the rent. 2. When he has removed it, or any portion thereof, without consent of landlord.

The attachment may be levied on the crop in the hands of the tenant, or purchaser from him.

Where a party enters upon and detains lands or tenements in possession of another, by force, or when he enters peaceably and keeps the party out of possession; or where one has entered lawfully into possession of lands or tenements, after the termination of his possessory interest, and refuses on demand in writing, to deliver possession to any one lawfully entitled thereto, a complaint may be made to a justice of the peace, who will issue a notice to the party complained of, commanding him to appear before him, within six days before the return day of the process, which notice may be served on him any where within the state. It is sufficient to leave a copy at his usual place of abode.

## MISSISSIPPI.

Any landlord, where the agreement is not by deed, or contract, may recover a reasonable satisfaction for the lands or tenements, held or occupied by defendant.

In all cases in which a notice is required to be given by the landlord or tenant, to determine a tenancy, two months' notice in writing shall be given where the holding is from year to year, and one month's notice where the holding is by the half year or quarter; or where the letting is by the month or week one week's notice in writing shall be given.

When any tenant shall fail or refuse to quit the premises as required by said notice, or when he shall have given notice of his intention to quit at a specified time, and shall fail to deliver up the premises at the time in such notice contained, then, and in either such case, the tenant shall pay double rent for the time he shall continue in possession.

Any tenant or lessee, at will, or at sufferance, or for part of a year, or for one or more years, of lands or tenements, may be removed by the judge of probate, or any justice of the peace of the county, mayor, chief magistrate, or justice of the peace of any incorporated city or town where such premises are situated, in the following cases: Where such person shall hold over after expiration of his term;—or, after default in payment of rent, pursuant to the agreement, and satisfaction cannot be obtained by distress of any goods, and a demand of said rent shall have been made, or three days' notice in writing, requir-

ing the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, on the person owing the same, in the manner prescribed by this act for the service of the summons.

The landlord shall make oath of the facts, which, according to the preceding article, authorize the removal of the tenant, describing the premises, amount of rent due, and when payable, and in case of a tenancy at will, or at sufferance, that the necessary notice to terminate such tenancy has been given.

The judge, or other magistrate, shall issue a summons to the sheriff, or constable of the county, or marshal, police officer, or constable of any incorporated city or town, where the premises are situated, commanding him to require the person in possession, forthwith to remove from the same, or show cause before such judge, in not less than three nor more than five days, why possession of said premises should not be delivered to such applicant.

The person in possession may, at or before the time appointed, file an affidavit with the magistrate, denying the facts, and the matter thus controverted may be tried by such magistrate, or at the request of either party, by a jury.

## GEORGIA.

A person to whom rent is due, where the same does not exceed fifty dollars, may make application to any justice of the peace within the district, where tenant resides, and obtain from the justice a distress warrant for the sum due, on his oath or his agent's or attorney's in writing, and the same may be levied on the goods of the tenant by any constable, who shall advertise and sell the same under the same rules and regulations as other sales under execution. If over fifty dollars, the distress shall be levied by the sheriff of the county. The party distrained shall be entitled to replevy the goods, by making oath that the sum or part thereof is not due, and giving security for the payment.

Rent is not to be preferred to judgments against the person or property so distrained.

Tenants holding over shall pay double rent monthly.

If any person leasing or renting house or land shall fail to pay rent at the time it shall become due, the landlord may immediately re-enter and take possession of the premises.

All contracts for rent to bear interest. Suits for rent to stand for trial at the first term, unless good cause shall be shown for the continuance, nor shall such action be continued for more than one term, any law to the contrary notwithstanding.



When a tenant holds over and refuses to deliver possession, the lessor or owner, on oath of the facts, may obtain a warrant of the judge of the superior court, or any justice of the inferior court, or justice of the peace, who shall grant a warrant to the sheriff to remove the tenant and his property from the premises.

When the tenant shall declare on oath that his lease, whether written or verbal, has not expired, or that he does not hold the premises either by lease or rent from said person, or by any one holding under him by rent or lease, he shall not be removed from the possession. Sheriff to return proceedings to court, and the fact shall be tried, and if determined against tenant he shall pay double rent, and the plaintiff be put in possession of the premises.

Whenever a person shall be a tenant of another, upon land at will, or sufferance, or in any other way, when there is no contract for rent, landlord may proceed to recover possession in the manner before mentioned, except there shall be no verdict or judgment for double rent.

No leases, estates, or interests, either for freehold or term of years, can be assigned, granted, or surrendered, unless it be by a deed or note in writing.

When one half year's rent shall be in arrear, and the lessor or landlord hath right by law to re-enter for non-payment, such lessor or landlord may, without formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises.

Distress for rent may issue as well on the oath of the agent or attorney of the party claiming rent, as of the said party in person.

## FLORIDA.

Any person who may have rent due, when the sum does not exceed fifty dollars, may make application to any justice of the peace of the county, and on affidavit of the same, the justice shall issue a distress warrant, directed to any constable of the county, whose duty it shall be to levy on the property belonging to the tenant. *Provided, however,* that the party distrained shall be entitled to replevy the property, and give bond and security for the amount due.

If said property is not replevied within ten days after levying, the officer making the same, shall advertise and sell the property.

No property of any tenant or lessee, shall be exempt from distress and sale for rent, except bed, bed clothes, and wearing apparel.

If any person leasing or re-renting any land or house, shall fail to pay rent at the time it becomes due, it shall be lawful for the lessor immediately thereafter, to enter and take possession of the property.

If tenant shall refuse to give possession of the premises at the end of his lease, he shall pay double rent, which may be recovered at the expiration of every month, or in the same proportion for a longer or a shorter time, by distress in manner as aforesaid.

When lands or tenements are not held or occupied under an agreement or demise, landlord may recover a reasonable satisfaction for use and occupation.

Any tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, may be removed from such premises in the manner following:—1. When such person holds over and continues in possession after the expiration of his time, without permission of the landlord. 2. Where such person holds over after default in payment of rent, and a demand shall have been made, and three days' notice in writing requiring payment or possession of the premises, shall have been served on the person owing the same, by either delivering him a copy, or if tenant be absent from his residence, by leaving a copy at such place.

The landlord shall make oath in writing, of the facts which authorize the removal of any tenant, describing the premises, before some justice of the county, who shall summons the person in possession forthwith to remove from the premises, or show cause before the said justice, in not less than three nor more than five days, why he should not be removed therefrom. And if no sufficient cause be shown to the contrary, the said justice shall issue his warrant to any constable, commanding him to put said applicant in possession.

If the person in possession file an affidavit, denying the facts, the case shall be tried by six jurors, to be immediately summoned and empanelled for that purpose.

## T E X A S .

All persons granting a lease of lands or tenements, either at will or for a term, shall have a lien upon all the property of the tenant upon the premises, for the payment of the rent under such lease, whether the same is to be paid in money, cotton, corn, or whatever else may be raised on the premises; and such lien shall continue in force so long as such tenant shall occupy the premises, and for three months thereafter; *Provided*, that such lien shall not attach for more than three months after the same shall be removed from the premises; nor to any goods of a

merchant or trader after the same shall be sold in good faith. Lien to be enforced by a distress warrant, on application to any justice of the peace of the county ; *Provided*, such plaintiff, his agent or attorney, shall make oath that the amount sued for is for rent, or shall produce a writing from such tenant to that effect.

If the sum is not more than one hundred dollars the warrant to be returnable to said justice, or to some justice of the county, but if more than one hundred dollars to the district court.

Landlords shall not have a preference over other creditors, on any portion of tenant's property, except on the crop that may be raised on rented premises.

The three months' lien shall only apply to the crop raised on the premises, and to no other property of the tenant. Lien not to continue beyond the first day of January next, after the maturity of the crop, unless found on rented premises.

Party applying for distress warrant shall make oath and give bond.

Landlords and tenants shall not be prevented from entering into contracts in regard to lien as they may think proper ; *Provided*, that the rights of third persons shall not be affected, unless contract be reduced to writing and put upon record.

Where tenant holds over his term, the person claiming possession may institute a suit before some justice of the peace of the county, and file with such justice a full and clear statement of his complaint. The case to be tried by six jurors. The party shall be summoned to appear before said jury, in not less than five nor more than ten days.

If defendant shall fail to establish his right of possession, he shall be condemned to pay three times the value of the rents which may have accrued, besides being liable for all other damage resulting from the illegal detention.

Lease for more than five years must be sealed and delivered.

## VIRGINIA.

Statute form of a Deed of Lease in Virginia, [See Business Man's Assistant, page 44.]

No estate for a term of more than five years, in lands, shall be conveyed unless by deed.

Lease for a longer term than one year must be in writing.

A tenancy from year to year may be terminated by either party giving notice in writing, prior to the end of any year, for three months, if it be of land within and six months, if without a town, of his intention to terminate the same. No notice is required where there is a special agreement, or when the term is to end at a certain time.

If any tenant, from whom rent is in arrear, and unpaid, desert or leave the premises, without goods thereon subject to distress sufficient to satisfy said rent, the lessor or his agent may post a written notice upon a conspicuous part of the premises, requiring the tenant to pay said rent within one month. If the same be not paid within that time, the lessor shall be entitled to possession, and the right of the tenant shall thenceforth be at an end. But the landlord may recover rent up to that time.

When the agreement is not by deed landlord may recover by distress or action, for use and occupation.

Rent may be recovered from the tenant or his assignee, or the personal representative of either.

Rent may be distrained for, within five years from the time it becomes due, whether the lease be ended or not.

The distress shall be made by a constable, sheriff, or other officer of the county, or corporation, wherein the premises or some part thereof may be, or the goods liable to distress may be found, under warrant from a justice, founded upon an affidavit of the person claiming rent, or his agent, that the amount as he verily believes is justly due for rent from the person of whom it is claimed.

The distress may be levied on any goods of the lessee or his assignee, or under tenant, found on the premises, or which may have been removed therefrom within thirty days. If the goods, when carried on the premises, are subject to lien, his interest only shall be liable to distress. If lien be created while they are on the leased premises, they shall be liable to distress, but not for more than one year's rent, whether it shall have accrued before or after the creation of the lien. No other goods shall be liable to distress than such as are declared to be so liable in this section.

The officer having such distress warrant, if there be need of it, may, in the daytime, break open and enter into any house or close, in which there may be goods liable to the distress.

Where goods are distrained, or attached for rent, reserved in a share of the crop, or in any thing other than money, the claimant having given tenant ten days' notice, or if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the court, and the court having ascertained the value, either by its own judgment, or if either party require it, by the verdict of a jury, shall order the goods to be sold.

Any person who shall have a right of entry, by reason of any rent being in arrear, or breach of any covenant or condition, may serve a declaration in ejectment on tenant in possession, or if possession be vacant, by affixing the declaration upon the

chief door of any messuage, or any notorious place on the premises; which service shall be in lieu of a demand and re-entry; and upon proof to the court by affidavit in case of judgment by default, or upon proof on the trial, that the rent claimed was due, and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration, and that plaintiff had power thereupon to re-enter, he shall recover judgment and have execution for such lands.

Unless defendant, or other person for him, pay rent with interest and costs, within twelve months after execution, he shall be barred of all right to be restored to such lands or tenements.

## DELAWARE.

Any contract, or consent, pursuant to which a tenant shall enter into, or continue in possession of lands, tenements, or hereditaments, under an agreement to pay rent shall be a demise.

Where no time is expressly limited, a demise shall be construed to be for a year, except of houses and lots usually let for a less time.

No demise, except it be by deed, shall be effectual for a longer term than one year.

If there be a demise for a term of one or more years and three months or upwards, and before the end of the term either the landlord do not give notice in writing to the tenant to remove, or the tenant do not give like notice to the landlord of his intention to remove, the term shall be extended for another year, for which the tenant shall pay rent.

Tenant holding over, after notice as aforesaid, shall pay double rent, and such withholding of possession shall be deemed a forcible detainer.

Satisfaction for use and occupation, by permission of a person, without demise by deed or contract under seal for rent, may be recovered in an action on the case upon assumpsit, and also where a person entered into possession under a contract to purchase.

A distress will lie for any rent arrear, either of money, or a quantity or share of grain, or other produce, or of anything certain, and whether the same be a rent accruing upon a demise for life, or a term of one or more years, or a less time, or at will, or a rent-charge, rent-seck, quit-rent, or otherwise.

The person entitled to such rent, whether the original lessor, or an assignee, heir, executor, or administrator, may distrain for the same, either personally, or by bailiff.

If the tenant remove his goods or chattels, without payment of rent due or growing due, and without written permission of landlord, the goods so removed, unless sold fairly and for a val-

uable consideration and delivered to the buyer, shall be liable to be distrained for said rent for forty days after the removal, or if the rent be not in arrear for forty days after the rent shall become in arrear. Notice must be given to tenant of the property, distrained, and if it be not replevied within five days, after the day of notice, the sheriff or constable shall have the same appraised, and after six days from the appraisal of the property and not replevied, the sheriff, or any constable, shall sell the same, first giving at least six days' notice, by advertisements posted in at least five public places in the county.

No distress shall remain in force more than sixty days. If not sold within that time, the property shall be discharged from the distress.

In no case shall distress be taken for rent after the expiration of two years from its becoming in arrear.

Landlord may have an attachment for rent not due, by filing an affidavit with the prothonotary of the county, that he believes the tenant intends to remove his effects from the county, or otherwise dispose of them, so as to defeat a distress for said rent.

Goods discharged if tenant give bond.

Any estate purely at will, shall end three months after notice to quit; or at the time specified in the notice if more than three months.

## CALIFORNIA.

No person or persons shall make any entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases, not with strong hand nor with multitude of people but only in a peaceable manner; and if any person do the contrary, and thereof be duly convicted, he shall be punished by fine.

Any justice of the peace, on complaint made in writing of such unlawful forcible entry, or unlawful detainer, shall have authority to inquire into the same, and if it be found upon the trial of any complaint under this act, that an unlawful entry or detainer hath been made, shall cause the party complaining to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, and tax the cost of complainant, and may issue execution therefor.

In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed for waste and injury committed upon the premises as for the rents and profits during such detainer, and the verdict shall find the monthly value of the rents and profits of said premises; and the complainant shall be entitled to recover treble damages against the person against whom judgment has been rendered.

When any person shall hold over any lands or tenements, after the termination of the time for which they are demised, or let, contrary to the conditions or covenants of the lease or agreement, under which he or she holds; or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of *three days*, in all such cases, if the landlord, his representatives, or attorney, shall make demand in *writing* of such tenant that he shall deliver possession of the premises, and he shall neglect or refuse for the space of *three days* after such demand, to quit the possession of such lands or tenements, or to pay rent thereof, upon complaint therefor to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same, as in the other cases herein-before provided for,—but shall impose no fine upon any such case mentioned in this section.

The preceding section shall not extend to any person who has, or shall have continued in possession one year after the termination of the time for which the premises were leased, or let, or to any person who continues in possession three years, quietly and peaceably.

If either party shall feel aggrieved by the verdict of the jury or decision of the justice, he may appeal within ten days, and give bond, conditioned to pay all costs, rent and other damages accruing during the pending of such appeal.

Every contract for the leasing, for a longer period than one year, is void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing.

No lands shall be conveyed by lease or otherwise, except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for less than twenty years. All leases hereafter made contrary to this act shall be void.

## NORTH CAROLINA.

Rents payable in crops sufficient to satisfy the rent for the year, are exempt from execution, except for taxes, unless the party at whose suit the execution may issue shall, before removal, set apart for the landlord, he having due notice thereof, the rent reserved, or shall satisfy him therefor.

Landlord may recover for use and occupation, where the demise is not by deed.

Verbal agreements for leases for any land, for more than three years, and those for mining for any time, though less than three years, are void by Statute. 13 Ire. 279.

All leases required to be put in writing, upon due proof or acknowledgment thereof, in the manner provided for the conveyance of land, shall be registered in the proper county within two years from date.

The estate of a tenant at will is determined by a demand of possession by the owner.

## MINNESOTA.

All estates at will or by sufferance, may be determined by either party, by three months' notice given to the other party, and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient if it be equal to the interval between the times of payment, and in all cases of neglect or refusal to pay rent on a lease at will, fourteen days' notice to quit in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Contract for leasing for a longer period than one year, unless in writing, is void.

Persons holding over lands, tenements, or other possessions, after the termination of the time for which they are demised or let, or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days, or if the landlord, his agent or attorney shall make demand in writing of the tenant for possession of the premises, and such tenant shall refuse or neglect for the space of three days after such demand to quit possession, or to pay rent so due as aforesaid; then upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same.

The preceding section shall not extend to any person who has, or shall have continued in possession three years, after the termination of the time for which the premises were demised, or let to him or her, or those under whom he or she claims; or to any who continues in possession three years, quietly and peaceably by disseizin.

The complainant shall be entitled to bring a civil action against the person complained of, and if on trial such person be found guilty, may recover treble damages from the time of notice to quit, and until that damages only.



# FORMS OF LEASES,

AND

AGREEMENT FOR LEASE, GUARANTEE OF LEASE, SPECIAL  
COVENANTS, SURRENDER OF LEASE, ASSIGNMENTS OF  
LEASE, NOTICES TO QUIT FOR NON-PAYMENT OF  
RENT AND TO DETERMINE TENANCY, ETC.



# F O R M S

## OF

# A G R E E M E N T S , L E A S E S , E T C .

### CHAPTER IV.

#### *Agreement for a Lease.*

MEMORANDUM OF AN AGREEMENT made this       day of  
      , 18   , between A. B., of       , of the one part, and C. D., of  
      , of the other part:

Witnesseth, That the said A. B. agrees to let, and the said C. D. agrees to take on lease for the term of       years, to be computed from the date hereof, all those premises situate in       , at the yearly rent of       dollars per annum, to be paid quarterly, and to commence from the first day of July next, without any deduction whatsoever, for or on account of taxes, &c., the said lease to contain the same covenants as are contained in the lease from J. O. to the said A. B., and also that all erections now on the premises are to be left.\*

Signed, &c.

A. B.  
C. D.

#### *Short Lease of a House, or Store.*

THIS INDENTURE witnesseth, that I, A. B., of       , do hereby lease to C. D., of       , for the term of one year, to commence on the       day of       next, the dwelling-house [or store], numbered 22 Washington street, in the city of       , with the appurtenances, for the yearly rent of       hundred dollars, to be paid in quarterly payments of       dollars each, on the first day of the months of April, July, October, and January.

And C. D. promises to pay A. B. the said rent at the times above specified, and to quit and surrender the premises at the expiration of the term in as good condition as reasonable use thereof will permit, fire, and other unavoidable casualties excepted.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals this       day of       A. D. 185   .

A. B. [L. s.]  
C. D. [L. s.]

*In presence of*

\* The above agreement does not amount to an actual lease, there being on clause showing that the defendant was to have the land from the time of executing the agreement, 4 Jur. 490.

*Lease of Two Rooms with Privileges.*

**THIS INDENTURE** witnesseth, That I, A. B., of      , do hereby demise and lease to C. D., of      , one back room in the second story, and one room in the third story, with a privilege in the kitchen, back-yard, and cellar; being part of the house and appurtenances now occupied by sundry tenants, situate in B. street, No. 4, in the city of B.

To hold the same for the term of two years, from the      day of      next, the said lessee yielding and paying therefor the rent or sum of      dollars a year, payable weekly [*or, monthly,*] by equal and even portions; the first payment to be made on the day of      next ensuing the date hereof.

And the said C. D. agrees to pay the said A. B., the above rent as aforesaid, and at the end of the term, peaceably quit the said premises, leaving them in as good condition and repair as they are now in, reasonable wear, accidental fire, and other unavoidable casualties excepted.

Witness our hands and seals, this      day of      , A. D. 185 .

A. B. [L. s.]

*Executed in presence of*

C. D. [L. s.]

*Guarantee for Payment of Rent.*

In consideration of the letting of the within described premises, at my request, I do hereby guarantee to Mr. A. B., the punctual payment of the rent therein mentioned for one year, and no longer. E. F. [L. s.]

*In presence of*

*Lease of House, or Store.*

**THIS INDENTURE**, made this      day of      , 185 , between A. B. of      , and C. D. of      , witnesseth:—

That the said A. B., in consideration of the agreements of the said C. D. hereafter mentioned, does hereby lease to the said C. D. the dwelling-house [or store] with the appurtenances, numbered 44 B. street, in the city of B., now occupied by J. E.

To have and to hold the same to the said lessee for the term of *four* years from the date hereof. And the following are the terms, conditions, and provisions of this lease:—

The rent of said store [or house], annually during said term shall be      dollars, which said lessee agrees to pay said lessor in quarterly payments of      dollars each; the first payment thereof to be made on the      day of      now next ensuing.

And the lessee promises to make no unlawful or offensive use of the premises, to pay all taxes and assessments that shall be levied on the same, to keep the premises in good repair, and deliver up the same to the lessor at the end of the term in reasonably good order and condition, fire and unavoidable casualties excepted.

And the lessor agrees that the lessee shall occupy the premises during the term free from all lawful claim of any other person.

In case said store shall be destroyed or rendered unfit for its accustomed uses by fire or other unavoidable casualty during the said term, thereupon this lease shall be terminated.

If said lessee shall neglect to make any quarterly payment of rent,

or pay any tax or assessment, or refuse or neglect to fulfil any condition herein on his part contained, for the term of        days after said lessor shall in writing have given him notice of such neglect, thereupon the said lessor may enter the premises and expel the said lessee therefrom, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

In witness whereof the parties have hereunto interchangeably set their hands and seals the day and year first above written.

A. B. [L. s.]  
C. D. [L. s.]

*In presence of*

*Guarantee for Payment of Rent.*

In consideration of the letting of the above described premises, and of one dollar to me paid, I do hereby promise and bind myself, that the said C. D. shall pay the rent and perform the above lease or agreement on his part in all respects, for one year, and no longer.

Witness my hand and seal, the        day of       , 18—.

E. F. [L. s.]

*In presence of*

*Lease of Furniture, or Goods.*

THIS INDENTURE, made this        day of       , 185   , between A. B. of       , and C. D. of       , witnesseth:

That in consideration of the rents and agreements to be paid and performed on the part of the said C. D., the said A. B. does hereby lease to the said C. D., the household furniture [or goods] described as follows:

|                               |                            |
|-------------------------------|----------------------------|
| 2 Looking Glasses,.....       | Marked 'A. B. on the back. |
| 1 Bureau,.....                | " A. B. on the back.       |
| 1 Grecian Table,.....         | " A. B. under the leaf.    |
| 12 Mahogany Chairs,.....      | " A. B. under the seat.    |
| 12 Silver Tea Spoons,.....    | " A. B. on the handle.     |
| 1 Piano,.....                 | " A. B. on the back.       |
| 2 Kidderminster Carpets,..... | " A. B. in the corner.     |

To have and to hold the same to the said lessee, for the term of        years, from the date hereof, the said lessee paying therefor the yearly rent of        dollars during the said term.

And the said lessee covenants with the said lessor, that he will pay the rent aforesaid, in monthly payments of        dollars each, on the        day of each month, during said term, and for such further time as the lessee may hold the same; and that he will not assign nor underlet the said       , nor any part thereof, without the written consent of said lessor: and that he will at his own expense replace any and all of said        which shall be lost, or carelessly or accidentally injured during the said term; and at the expiration thereof, or the sooner termination of this lease, he will restore the said        to the said lessor, in the like good order in which they now are, wear and diminution resulting from reasonable use and unavoidable casualties excepted.

And it is agreed that, until condition broken, said C. D. shall peaceably retain possession of said chattels.

In witness whereof, the said parties have hereunto, &c.

A. B. [L. s.]  
C. D. [L. s.]

*In presence of*

L & T

\*

*An Unexceptionable Lease.*

THIS INDENTURE, made the ——— day of ——— in the year eighteen hundred and ———, between A. B., of ———, of the one part, and C. D., of ———, of the other part,

*Witnesseth*, That in consideration of the covenants herein contained on the part of the said C. D. and his representatives, to be kept and performed, he the said A. B. doth hereby grant, demise, and lease unto the said C. D. and his representatives, ——— [*here describe the premises and situation.*]

To hold the said premises, with the rights, easements and appurtenances thereto belonging, unto the said C. D. and his representatives, from the ——— day of ———, during the full term of ——— years, thence next ensuing.

*Yielding and Paying* (except only in case of fire or other casualty, as hereinafter is mentioned) the rent or sum of ——— dollars yearly, by equal quarterly payments, *to wit* : on the ——— days of —, —, —, and —, in every year during said term and at that rate for such further time, as the said Lessee, or those claiming under him, shall hold the said premises or any part thereof; the first payment thereof to be made on the ——— day of ——— now next ensuing.

AND the said Lessee for himself and his representatives, hereby covenants and agrees with and to the said Lessor, his representatives and assigns, that he and they will during the said term, and for such further time as the said Lessee or those claiming under him shall hold the said premises, or any part thereof, pay unto the said Lessor his heirs and assigns, the said yearly rent as aforesaid, upon the days hereinbefore appointed for the payment thereof, (except only in case of fire or other casualty, as hereinafter mentioned,) and also all the taxes and assessments whatsoever, whether in the nature of taxes now in being or not, which may be payable for, or in respect of the said premises or any part thereof, during said term : and also will keep all and singular the said premises in such repair, as the same are in at the commencement of said term, or may be put in by the said Lessor or his representatives, during the continuance thereof; reasonable use, and wearing thereof, and damage by accidental fire or other inevitable accidents alone excepted.

And the said Lessee further covenants and agrees with and to the said Lessor, and his heirs and assigns, that he or others having his estate in the premises, will not assign this lease, nor underlet the whole or any part of the said premises; and that no alterations or additions shall be made during the term aforesaid, in or to the same, without the consent of the said Lessor or of those having his estate in the premises being first obtained in writing allowing thereof; and also, that it shall be lawful for the said Lessor and those having his estate in the premises, at seasonable times, to enter into and upon the same, to examine the condition thereof: AND further, that he the said Lessee and his representatives, shall and will, at the expiration of said term, peaceably yield up unto the said Lessor or those having his estate therein, all and singular the premises, and all future erections and additions to or upon the same, in good tenantable repair in all respects, reasonable wearing and use thereof, and damage by fire, or other casualties excepted.

*Provided always*, and these presents are upon this condition, that if the said Lessee or his representatives or assigns, do or shall neglect or fail to perform and observe any or either of the above covenants hereinbefore contained, which on his or their part are to be performed, then, and in either of said cases, the said Lessor or those having his estate in the said premises, lawfully may, immediately or at any time thereafter, and whilst such neglect or default continues, and without further notice or demand, enter into and upon the said premises, or any part thereof, in the name of the whole, and repossess the same as of his or their former estate, and expel the said Lessee and those claiming under him, and remove his or their effects, (forcibly if necessary) without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies, which might otherwise be used for arrears of rent, or preceding breach of covenant.

*Provided also*, That in case the premises, or any part thereof, shall during said term, be destroyed or damaged by fire, or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be suspended, or abated† until the said premises shall have been put in proper condition for use and habitation by the said Lessor; or these presents shall thereby be determined and ended at the election of the said lessor [*lessee*] or his representatives.\*

And the said lessor doth promise that while the lessee and his representatives, pay the rent and perform the covenants herein named, they shall peaceably hold and enjoy said premises.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

*Executed in presence of*

A. B. [L. s.]  
C. D. [L. s.]

\* Without an express covenant to the contrary, the tenant is bound to continue the payment of rent, though the premises be destroyed by fire, and the landlord refuse to rebuild. If a lessee covenants to pay rent, and to repair, with an express exception of casualties by fire, he may be obliged to pay rent during the whole term, though the premises are burnt down by accident, and never rebuilt by the lessor. 1 T. R. 310. Nor can he be relieved by a court of equity, Anst. 687. unless perhaps the landlord has received the value of his premises by insuring. Amb. 621. And if he covenants to repair generally, without any express exceptions, and the premises are burnt down, he is bound to rebuild them. 1 T. R. 650.

### *Guarantee for Payment of Rent.*

In consideration of the execution of the above written lease, at our request we do hereby guarantee to the said A. B. the true and punctual payment of the rent reserved at the times and in the manner therein mentioned, and in default thereof promise to pay the same on demand.

Witness our hands and seals, this ——— day of, &c.

E. E. [L. s.]

*Executed in presence of*

F. F. [L. s.]

### *Lease of a Farm on Shares.*

THIS INDENTURE, &c. [*same as preceding Lease.*]

†NOTE.—Or returned to said C. D., (in case the rent was paid in advance.

Witnesseth, That, in consideration of the covenants herein contained on the part of the said C. D. and his representatives, to be kept and performed, he, the said A. B., doth hereby grant, demise and lease unto the said C. D., and his representatives, the [here describe the premises]; and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said A. B.

To have and to hold the above mentioned and described premises, stock and farming utensils, with the rights, easements and appurtenances thereto belonging, unto the said lessee, and his representatives, from the day of , eighteen hundred and fifty , for and during the full term of years thence next ensuing.

In consideration whereof, the said lessee hereby covenants and agrees, to and with the said lessor, that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a husbandlike manner and according to the usual course of husbandry; that he will not commit any waste or damage, or suffer any to be done; that he will keep the fences and buildings on the said premises in good repair; and that he will deliver to the said lessor, and his representatives, or to his or their order, one equal half of all the proceeds and crops produced on the said farm and premises aforesaid, of every name, kind and description, to be divided on the said premises, in the mow, stack or half bushel, according to the usual course and custom of making such divisions in the neighborhood, and in a seasonable time after such crops shall have been gathered and harvested.

It is further understood and agreed between the aforesaid parties, that the said lessor shall furnish in due season, one-half of all the seed necessary to be sown on said premises, and pay half of all taxes which may be assessed on the same; and that the lessee shall do, or cause to be done, all necessary work and labor in and about the cultivation of the said premises; that he is to have full permission to enclose, pasture, or till and cultivate the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes, and repairing fences.

And the said lessee agrees that he will carefully tend and fodder the stock kept on the said premises, with the hay and other fodder which shall grow or be raised on said premises; and that he will not sell, dispose of or carry away, or suffer to be carried away from said farm any of the hay or fodder of any kind, but will leave thereon all the hay and fodder which shall not be consumed by the stock aforesaid, and all the manure which shall be made on said premises, for the sole use and benefit of the said lessor.

And it is further agreed that the said lessee, and his representatives, shall at the expiration of said term, peaceably yield up unto the said lessor, or those having his estate therein, all and singular the premises, and all future erections and additions to or upon the same, in good tenantable repair in all respects, reasonable wear, damage by fire, and other unavoidable casualties excepted.

In witness whereof the said parties have hereunto, &c.

A. B. [L. s.]  
C. D. [L. s.]

*Executed in presence of*



*Covenants.*

And the said lessor covenants with the said lessee that the premises are in good tenable condition, and especially that the outbuildings, privy, &c., are in good repair.

*Provided also,* That in case the premises, or any part thereof, shall during said term, become untenable from any cause other than the wrongful acts of the tenant, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be suspended, or abated until the said premises shall have been put in proper condition for use and habitation by the said Lessor; or these presents shall thereby be determined and ended at the election of the said Lessee.

And the lessor agrees that if at any time the water fixtures (a pump) get out of repair, or the water becomes impure, from any other cause than the wrongful acts of the tenant, the landlord shall, upon notice thereof, cause the necessary repairs and cleansing to be made in a reasonable time; and if the tenant is obliged to buy water on account of the water fixtures being out of repair, or of the failure or impurity of the water, the expense thus incurred, the tenant having given the lessor reasonable notice of the fact, shall be deducted from the rent.

And the lessor further agrees that he will keep the roof and outside walls of the house tight, and in good repair, and will paint the outside walls every third year, and paint the inside, paper the rooms &c.

And the said lessor doth promise that while the lessee and his representatives, pay the rent and perform the covenants herein named, they shall peaceably hold and enjoy said premises; subject however, always to the legal rights (if any) of the owners of the equity of redemption, and subsequent mortgagees.

And further, that in case said building, or any part thereof, shall be destroyed or injured during the term, by fire or other casualty, and the lessor or those having his estate in the premises, shall rebuild or repair the same, so that their value shall be increased, the said lessee or his representatives, shall pay such additional rent, for the residue of the term, as shall be just and reasonable.

And it is further provided and agreed, that either party may at his pleasure terminate this lease on the terms and conditions, that he shall have fulfilled all the covenants herein on his part contained, that he shall pay to the other party the sum of — dollars for his privilege to terminate the lease, and that he shall give to the other party ten days' previous notice in writing of his intention to terminate the same.

And the lessee shall have the right to extend this lease four years from its termination, giving three months notice previous thereto of his intention to do the same.

And said lessee agrees to defray all the expense of emptying the Drains, Privy, and Cesspool, when necessary, and keeping the same conformably with the By Laws and Ordinances of the city of —.

And said lessee agrees to pay all the expenses connected with the Cochituate Water, and all damages to the demised premises caused thereby.

And the said lessee, for himself, his representatives, and assigns, further covenants and agrees with and to the said lessor, his representatives and assigns, that he or others having an estate in the premises, will not keep or sell, or suffer to be kept or sold, any ardent spirits; nor will he use, or suffer, or permit the use of camphene or spirit gas on the premises; and the said lessee further agrees, that he will in no way use or permit the use of any inflammable material, whereby the risk from fire may be increased.

And inasmuch as the glass in the several windows of said premises are now entire and unbroken, the said lessee promises and agrees that, in this particular, the premises shall be restored to the lessor in the same condition.

And the said lessee doth hereby covenant and agree to and with the said lessor, that he, the said lessee, his representatives and assigns, shall and will, within — months next after the date hereof, lay out and expend the sum of — dollars, in repairing the said tenement, hereby demised, [or shall, and will, at his own proper cost and charges, well and sufficiently put the said tenement hereby demised, in a good, sufficient, and tenable repair, and particularly shall and will] (here mention the particulars agreed on.)

And in case the said rent or taxes shall be in arrear for the space of one week,

and the same shall have been duly demanded, on or after the day when the same shall have become payable : or if the lessee, in case of his insolvency, shall fail to give reasonable security for the payment of all sums then due, and thereafter to grow due, under this lease ; the lessor, or those having an estate in the premises, whilst such neglect or default continues, may, without further notice or demand, enter upon the premises, and expel the lessee and those holding under him, or may otherwise evict him or them without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant ; and thereupon the lessor may, at his discretion, re-let the premises at the risk of the lessee, who shall remain (for the residue of said term) responsible for the rent herein reserved, and shall be credited with such amounts only as shall be, by the lessor, actually realized.

THE taxes assessed upon the whole building, (when occupied by more than one tenant,) are to be apportioned every year upon the several apartments in the building rateably, according to the rent reserved for each occupant at the time of the assessment, and the proportion, or amount payable by the said lessee, is to be ascertained in that manner.

If at any annual assessment of taxes, any apartment is not let, the rate of rent thereof existing at the next preceding assessment, (or a rent proportioned to those then occupied) shall be taken for the purpose of this apportionment.

AND also, will keep all and singular the said premises in such repair as the same are in at the commencement of said term, or may be put in by the said lessor, or his representatives, during the continuance thereof ; and pay all charges for cleansing which may be payable for, or in respect of the premises, or any part thereof, during the said term.

AND the said lessee further covenants, that he will not suffer any ashes to remain in the said building, after the same are taken from the hearth or stove, unless in a safe deposit of brick or stone ; nor do any act or transact any business by which the insurance of said building may be affected.

AND that he, the said B. B., will not carry on in the premises any offensive trade or business, nor make, or suffer to be made, any alterations therein, but with the consent in writing of the lessor.

### *Landlord's Special Covenants.*

AND the said A. A., for himself, his representatives and assigns, does covenant promise, and agree, that the said lands and premises are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, taxes, assessments, and incumbrances, whatsoever.

AND that the said A. A., his representatives and assigns, shall and will on or before the expiration of this present lease, on the request and at the cost and charges of the said B. B., his representatives or assigns, grant and execute to him and them a new and fresh lease of the premises hereby demised, with their appurtenances, for the further term of ten years, to commence from the expiration of the term hereby granted ; the same to be at the same yearly rent, payable in like manner, and under and subject to the like covenants, provisoes and agreements as are contained in these presents ; such new lease, however, to be granted and valid on condition that the said B. B., his representatives or assigns, do execute a counterpart thereof, and also pay the said A. A., his representatives, or assigns, the sum of — dollars, at the time of executing said lease, as and by way of fine or premium for the renewal thereof.

AND the said lessor, his representatives or assigns, shall and will, at his or their own proper costs and charges, cause to be well and sufficiently painted all the outside wood and iron work belonging to the said premises every third year during the continuance of the said term, and shall and will, also, at his and their like proper costs and charges, during the said term, keep in good, sufficient and tenantable repair, as well all and singular, the glass and other windows, rooms, floors, partitions, ceilings, walls, roof, gutters, fences, pavements, grates, sinks, privies, drains, wells and water courses, as also all and every other the parts and appurtenances of the said premises.

Provided however, that in case the premises, or any part thereof shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be suspended or abated, until the premises shall have been put in proper condition for use and habitation, by the lessor, or those having an estate in the premises ; unless the said lessee shall elect to terminate the lease which, in such case, he shall have the right to do, and the estate of the lessee, and those holding under him, herein shall be thereby determined.

And the said lessee shall be allowed to remove his fixtures before or within a reasonable time after the end of the term, or may leave them on the premises to be valued to an incoming tenant, or the landlord shall take them at an appraisement to be made by two disinterested persons, one to be chosen by the landlord and the other by the tenant.

And further, that the said lessee, shall be answerable to the city government for all nuisances made or suffered on the premises during said term, and that he will pay all expenses connected with the use of the Co-chituate water on the demised premises by any person or persons, and also all damage which may be caused to the demised premises, or to any part of said building or its contents, by the use of said water on the demised premises, or by any carelessness or accident whatever connected with such use, and at the expiration thereof, peaceably yield up unto the said lessor or those having his estate therein, all and singular, the premises, and all future erections and additions to or upon the same, in good tenantable repair in all respects, reasonable wearing and use thereof and damage by fire or other casualties excepted; and further, to use and occupy the demised premises in no manner that shall interfere with the comfort and convenience of the lessor in his occupation of the lower part of said building, and upon no occasion to use or suffer to be used the demised premises in the evening or night for public lectures or any other public purpose whatever—and that no coals or other fuel shall be deposited at or near said building, for the use of the lessee between the hours of eight in the morning and two in the afternoon, without the special permission in writing of the said lessor, or those having his estate in the premises.

*Provided*, that if either party shall wish to terminate said lease, and thereof give notice in writing to the other, six months before the end of any year, then, from the end of the same year this lease shall be void.

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### *Lease for Years, of Lands, with Reservations, Exceptions, and Special Covenants.*

This Indenture, made, &c., between A. B. of, &c., and C. D. of, &c., witnesses, That in consideration of the covenants herein contained on the part of the said C. D., to be kept and performed, the said A. B. does hereby lease and demise to said C. D., all the farm, house, barns and other buildings, of the said A. B., now in possession of E. F., situated in —, bounded and described as follows, to wit: [*describe the leased premises*] with all the privileges and appurtenances thereto belonging.

*Excepting* and always reserving out of this present lease, to the said A. B., his heirs and assigns, all the timber and trees of every kind, and the growth and use thereof, other than fruit-trees, on the demised premises, with free liberty to the lessor and his representatives, during said term, to enter on the premises, to prune, cultivate, take care of, and cut and carry away at his pleasure the timber and trees hereby reserved to the lessor.

To have and to hold the above demised premises, with the exception aforesaid, to him the said C. D., for and during the full term of — years from the day of the date hereof: the said lessee yielding and paying therefor, yearly, and in each and every year during the said term, the rent of — dollars, payable in each and every of said years on the first day of

*Conclude with the usual form, or add such covenants as the case may require.*

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### *Surrender of a Lease to the Lessor, by Endorsement.*

KNOW ALL MEN BY THESE PRESENTS, That I, the within named C. D., in consideration of one dollar to me paid by A. B., do hereby grant and surrender to said A. B., the within written lease of the lands and premises therein mentioned, and all my estate, title, interest, and term of years yet to come and unexpired; which lands and premises are free from all incumbrances of what kind soever. To have and to hold the same unto the said A. B. and his assigns forever.

Witness my hand and seal this — day of — 1856.

*Executed in presence of*

C. D. [L. s.]

*Assignment of Lease by Endorsement.*

I, A. B., in consideration of — dollars to me paid by C. D., of —, do hereby grant and assign to the said C. D., the lease within written, and all my estate and interest in and to the premises thereby demised. To have and to hold the same unto the said C. D., from the — day of — next, for the remainder, yet to come, of the term of — years therein mentioned.

And I, the said C. D., agree with said A. B., that I will pay the rents, and perform the covenants, conditions, and provisions in said lease.

If said C. D. shall fail to pay the rents and perform any covenant in said lease, then, at the option of the said A. B., this assignment shall be void.

Witness our hands and seals this day of 185—.

A. B. [L. s.]

In presence of

C. D. [L. s.]

*Assignment of a Lease by Deed.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, in consideration of — dollars, to me paid by C. D., of —, do hereby grant and assign to the said C. D., a certain lease, dated the — day of —, 18—, made by E. F., of —, to said A. B., of a certain dwelling house and lot, with the appurtenances, situate in —, for the term of — years, at the yearly rent of — dollars. To have and to hold the same unto the said C. D., from the — day of — next, for the remainder, yet to come, of the term of — years therein mentioned.

And I, the said—(as above.)

If the said C. D.—(as above.)

Witness our hands and seals this — day of —, 185—.

In presence of

A. B. [L. s.]

C. D. [L. s.]

*Notice to Quit — by the Landlord.*

MR. B. B. SIR: You are hereby notified to surrender and deliver up to me the possession of the house and lot, known as No. —, in B Street, in the city [or town] of B., and to remove therefrom on the day of next, according to law, it being my intention to determine the tenancy. Yours, &c.

B, Jan. 1, 18—.

A. A. Landlord.

*Notice to Quit — by the Tenant.*

MR. A. A.—SIR: I hereby give you notice that I shall, on the day of next ensuing, quit possession, and remove from the premises I now occupy, known as No. —, in B street, in the city [town] of B., according to law, it being my intention to determine the tenancy.

B, Jan. 1, 18—.

Yours, &c.,

B. B., Tenant.

*Notice to Quit by Landlord, on Non-payment of Rent.*

MR. B. B.—SIR: I hereby give you notice to surrender and deliver up to me the possession of the house and lot known as No. —, in B street, in the city of —, [or town of —], the rent of which you have failed and neglected to pay for the past \*; and to remove therefrom in days from the date of this notice, according to law.

B, April 2, 18—.

Yours, &c.,

A. A., Landlord.

*Notice to Quit the Premises, or pay Double Rent.†*

MR. B. B.—SIR: You are hereby notified to surrender and yield up to me on the day of next, possession of the premises in B street, in the city of —, [or town of —], which you now hold of me. In failure whereof I shall require and insist upon double the value of the said premises, according to the statute in such case made and provided.

New York, May 2, 18—.

Yours, &c.,

A. A., Landlord.

\* Week, Month, Quarter, &c. See Chap. III, and pages 25, 26, 29.

† In New York, when the tenant willfully holds over after the expiration of the term, and notice to quit, the landlord is entitled to double rent.

MERCHANT'S ASSISTANT  
AND  
COMMON CARRIER'S GUIDE.



THE  
MERCHANT'S ASSISTANT  
AND  
COMMON CARRIER'S GUIDE :

CONTAINING THE LIABILITIES OF  
SHIP-OWNERS, SHIPMASTERS,  
RAILROAD COMPANIES, OWNERS OF STEAMBOATS,  
FERRYMEN, CANAL-BOATMEN, EXPRESS-MEN, STAGE-COACHMEN,  
HACKMEN, CABMEN, TRUCKMEN, CARMEN, HANDCARTMEN ;  
AND THE LAWS RELATING TO  
MARINE & INLAND INSURANCE,  
CONSIGNOR & CONSIGNEE, COLLISIONS,  
CHARTER-PARTIES — FREIGHT — BILL OF LADING — BOTTOMRY  
& RESPONDENTIA—DELIVERY OF GOODS—DEMURRAGE, &c.  
ALSO,  
FORMS FOR ADJUSTING GENERAL AVERAGE, SURVEYS OF SHIP,  
FURNITURE, GOODS — NOTICE OF ABANDONMENT — CHAR-  
TER-PARTY, PROTESTS OF SHIPS, STEAMBOATS, &c. BOAT-  
MAN'S WAGES TABLES, &c.

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BY I. R. BUTTS,

Author of the "Business Man's Assistant"; "Business Man's Law Library";  
"Merchant's and Mechanic's Assistant"; &c.

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BOSTON:  
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CORNER OF SCHOOL & WASHINGTON STREET,  
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## ADDENDA:

### *Sale of Goods by Carrier for Freight.*

By a decision of the United States Court, (2 Story's Rep. 81,) the Carrier has no right to sell the Goods for the Freight, except in certain cases. This decision is in some States overruled by Statute, which regulates the time and manner of Sale.

"In one case, where the master was, by his agreement with the shippers, to deliver the cargo at a place designated, but upon his arriving there the consignee refused to receive it, it was held, that, as the cargo was not of a perishable nature, the master was bound to land it at the place designated, and store it for the benefit of the shippers, and could not carry it to another port, nor sell it, although it could not be sold at the port designated."

"In this case, the cargo could have been landed at Velasco, which was the port of destination. There was no necessity of any sale as the cargo was not *perishable*, and therefore the sale would be unjustifiable on the part of the master; since it would not have been a sale of necessity. The cargo might have been landed and stored, and kept until the charterers in New York could have received information, and given orders as to what should be done with it. Assuming that a lien existed, still it is perfectly clear, by the language of the charter party, that the freight was payable 'on delivery of the cargo at Velasco.' So that until a right delivery on shore, no freight could accrue due. But no right could exist, on the part of the master to sell the cargo, unless it was perishable, and might otherwise have been lost or perished."

If the consignee cannot be found, or when found refuses to accept the goods, or if he accepts but refuses, or is unable to pay the freight—the master still has his remedy over against the shipper.

So, if the Statute, or the necessity of the case, gives the master the right to sell, and the goods do not bring as much as the freight, the master has his remedy over against the shipper for the balance.

When the regulations of the revenue require the goods to be deposited in the public warehouse, the master may enter them in his own name, and thus preserve his lien.

### *Freight, or Passage Money, paid in Advance.*

"When freight, or passage money, is paid in advance, and neither vessel or goods reach the place of destination, it shall be repaid, unless there be a special agreement to the contrary." 3 Pick. 20.

Parker, C J., in delivering the opinion of the Court, said, "It is sufficient then to say, that by reference to the opinion of Chief Justice Kent, (3 Johns R. 335) and the note of Mr. Justice Story, (Story's Abbot,) it will be found to be the established law of maritime countries on the continent of Europe, that '*freight is the compensation for the carriage of goods, and if it be paid in advance, and the goods be not carried by reason of any event not imputable to the shipper, it is to be repaid, unless there be a special reason to the contrary.*'" Ibid.

For further on the Liabilities of Carriers by Sea, see pages 37 to 44 and 92 to 100.

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Entered according to Act of Congress, in the year 1850,

BY I. R. BUTTS,

in the Clerk's Office of the District Court of the District of Massachusetts.



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# INTRODUCTION.

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## RESPONSIBILITIES OF MASTERS AND OWNERS.

THE MASTER is the person put in charge and command of a ship during her voyage. The master is an agent with ample powers to represent the owners in the management of the concerns committed to him. They are liable for such engagements as he may enter into for the necessary and usual employment of the ship, and for such acts as he may do in his character of master within his limit. If the owners themselves appear, and make a special contract regarding the service of the ship, the master cannot substitute another on his own authority. Where the authority of the master is questioned, the law on the subject will generally be influenced by the custom of merchants. *Charter-parties* [see page 92] are generally the sole acts of the owners themselves; but the master may be empowered to enter on a charter-party, and to bind the owners; and when he is abroad, this right is inherent in his office. In the case of a general ship, the owners rarely interfere to regulate the engagements with the particular merchants who furnish the cargo, and they are undoubtedly bound by every engagement made by the master relative to the usual employment of such a vessel. When the master binds the owners to repay money borrowed to accomplish repairs, or the price of repairs, stores, and provisions, he becomes, in the first place, himself personally bound, unless he, in express terms, confine the obligation to the owners. "But such a contract made by the owners themselves, or under circumstances which show that credit was given to them alone, gives the creditor no right of action against the master." (*Abbot.*) To render the owners liable, — when supplies are furnished, they must be reasonably proper for the occasion; and when repairs are undertaken, they must be necessary. The general rule on which the master should act is, to restrict himself to those obligations which a prudent owner would himself incur in the circumstances. "The creditor is required to prove the actual existence of the necessity of those things which give rise to his demand. The authority of the master is to provide *necessaries*; if, therefore, a person trust him for a thing not necessary, he trusts him for that which it is not within the scope of his authority to provide." (*Abbot.*) If the master expend money of his own for such purposes, he is entitled to demand repayment. In a home port the authority of the master to incur such obligations may be superseded by that of the owners or a ship's-husband; but the master's presumed power warrants individuals in contracting with him, unless they are aware of his being so superseded. The master may hypothecate the ship, or give the creditor a right to a security over it, for the expense of repairs in a foreign but not in a home port. It is the duty of the master, like every other agent, to use his own endeavors for furthering the interest of his constituents in the matter committed to his charge; and the greater importance of the trust calls on him for a corresponding exercise of vigilance and skill as an agent. He is responsible for losses occasioned by his misconduct or blunder.

THE OWNERS should have their vessel, both in hull and rigging, suited for the voyage, and for the safe keeping of the species of cargo contracted for or received on board. There must be a competent master and a sufficient crew of able seamen. The ship must have on board whatever papers are necessary for her protection and that of her cargo, whether required by the laws of the country she belongs to, or by those of the port of destination, or dictated by international law. There must be no false or fraudulent papers, which may subject the ship to capture or detention. The mercantile customs of the port must be adhered to in regard to the employment of wharfingers, lightermen, &c. in lading. The owners are responsible for theft, or robbery by the crew or any other person. The master previous to sailing must make the necessary clearances at the Custom-house, and pay all the usual charges. When the preliminaries are completed, the master must sail without delay when the weather is favorable, but not till then. A pilot must be employed in those roads, rivers, and narrow seas where such a precaution is enjoined, either by special law or usage. The master must proceed to the place of destination without delay, and without stopping at any intermediate port, or deviating from the straight and shortest course, unless such stoppage is justified by necessity or usage. [See *Deviation* page 72.] If the ship be captured or lost in consequence of deviation, the freighter may recover the prime cost of his goods and the shipping charges. In cases of difficulty and of danger, the master has to keep in view that it is his primary duty to convey the cargo to its place of destination, and that it is only in an extreme case, and when there is scarcely a possibility of accomplishing this object, that he is entitled to act as agent for the freighter, and adopt the course that seems to involve the least sacrifice to his property. [See *Freight*, page 95.] On arrival at the port of destination, the ship must be securely moored or anchored, and all papers delivered, and other requisites performed, in accordance with the customs regulations and the laws of the place.

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*Act of Congress—1851.*—"Owners are not liable for any loss or damage to goods, by reason of any fire happening on board the vessel, unless such fire is caused by the design or neglect of such owners, except the parties so contract. Owners are not liable for loss or damage to any gold, gold-dust silver or other precious metals, jewelry, bills of any bank, diamonds, or other precious stones, without, at the time of lading, their nature and quality be declared in writing, and the same be entered on the bill of lading therefor. Nor, if so notified and entered, shall the owners be liable beyond the value and character of the goods so notified and entered.

"The liability of owners for any embezzlement, loss or destruction, by masters, officers, mariners, &c., of any property or goods, or for any loss by collision, or any other loss accruing without the privity of the owner, shall in no case exceed the value of the ship and her freights then pending.

"The charterer of any vessel, in case he shall man, victual, and navigate her at his expense, or procurement, shall be deemed the owner within the meaning of the act. Nothing in the preceding sections shall take away the remedy to which any party may be entitled, against the master, officers or mariners, on account of any embezzlement or loss, &c ; or on account of any negligence or fraud of such master, officers or mariners.

"Persons shipping oil of vitriol, unslaked lime, inflammable matches or gunpowder, without delivering a note in writing to the master or mate, declaring the nature and character of such merchandize, shall forfeit to the U. S. \$1000

This act does not apply to any vessel used in inland navigation.

# COMMON CARRIERS.

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## CHAPTER I.

### GENERAL LAW IN RELATION TO CARRIERS,

*Who are Common Carriers?* Every person undertaking to carry goods by land or water, *for hire*, as a business, and not as a casual employment, is a *Common Carrier*.

A person who should carry goods occasionally, not as a business, but as a casual employment, or who should perform the carriage without recompense, would not be liable as a *Common Carrier*, for the safety of the goods, but he would be deemed a bailee, being responsible only for ordinary care and diligence. (See *Bailee*, p. 45.)

It is not necessary, however, to render a person liable as a Carrier, that a specific sum should be agreed upon for carriage; if he is in the habit of carrying goods for hire, an agreement to pay a reasonable compensation for the transportation will be presumed from the delivery of the goods to him.

*Common Carriers by Land* are the owners of railroads, stage-coaches, stage-wagons, omnibuses, express-wagons, &c.; also, wagoners, teamsters, carmen, hand-cartmen, truckmen, porters, and all others engaged in the transportation of goods for hire. •

Mere *Passenger Carriers*, who do not pretend to carry baggage, are not liable as Common Carriers. Thus, the proprietors of omnibuses, running between different sections of our large cities, and who hold themselves out to the public solely as carriers of passengers, would not be liable as Common Carriers, though they might occasionally carry parcels, as a matter of favor for their customers. So hackney-coachmen are not regarded as Com-

mon Carriers; but cab-drivers and owners of coaches, whose business consists in carrying passengers and their baggage, from the different steamboat landings and railroad depots, to various parts of the city, would probably be answerable as Common Carriers for the safety of such baggage; indeed, it would be strange were it not so, as, oftentimes, the sole inducement for a man to ride with them is to get his baggage carried. The liability of passenger carriers will be considered hereafter. (See p. 17.)

*Common Carriers by Water* are the owners and masters of ships, steamboats, ferry-boats, canal-boats, and all kinds of vessels belonging to foreign, coasting, or inland navigation, engaged in carrying goods for hire; this includes canal-boatmen, ferry-men, lighter-men, hoymen, bargemen, &c.

We shall speak of the Rights and Duties of *inland carriers*, which class consists of *carriers by land*, and also *the owners of steamboats, ferries and canals*, and then of *the rights and duties of carriers by sea*.

*Duty of Common Carriers to receive Goods.*—A Common Carrier is bound to receive all goods which are offered for the port of his destination, from any person who tenders him the regular or a reasonable compensation for their carriage. He can only refuse where his vehicle is full; or where he has not the proper conveniences for their carriage; or where the goods offered are not such as he is accustomed to take; or where they are of such a nature that their transportation will expose him to a real danger or violence.

He may regulate the place where, the time when, and the manner in which, he will receive goods for transportation; and he is not bound to receive goods until he is ready to carry them. But if he accepts goods for carriage, his liability will not be varied, from the fact that they were received at a different time or place from that established by him for the reception of goods. He may demand his freight at the time the goods are offered, and he has a right to demand a price for carriage proportioned to the risk run. He cannot, however, demand more than a reasonable compensation, and if he has established a regular price, the tender of that to him will be sufficient.



If he refuse to receive goods offered for carriage, unless for some one of the reasons mentioned above, he will be liable to an action for the damage occasioned thereby; and it will be sufficient for the person offering the goods, to maintain his action, to aver and prove that he was ready and willing to pay the regular or reasonable compensation for their carriage.

In regard to the *baggage* of a passenger, the price paid by him for his fare is deemed to include a compensation for the carriage of his baggage.

*Extent of the Duty and Liability of Common Carriers.* — A Common Carrier is bound to carry the goods safely, and deliver them to the proper person, without any loss or injury, except such as may be occasioned by the act of God, the public enemy, or the fault or fraud of the owner. He is regarded as an insurer of the property committed to his care, and if it is lost, stolen, or injured in any way, except as above, he is liable.

This law, making a Common Carrier an *insurer*, is enforced on principles of public policy, to prevent fraud and collusion with thieves and robbers; the owner of the goods, not being generally in a situation to oversee and protect his property, having placed it in the possession and under the protection of the Carrier.

*He is not Liable for a Loss or Injury occasioned by the "Act of God,"* and by the "Act of God," is meant something in opposition to the act of man, such as storms, lightning, tempests, and inevitable accidents, not resulting from human agency. If the loss or injury has been caused by the act of man, although it was inevitable, the carrier is liable.

If the goods have been destroyed or swept away by rain and floods, the circumstances attendant upon the loss must be regarded in order to determine whether it has been occasioned by the act of God or the act of man. If the carrier has neglected to provide cart-clothes and proper coverings for the goods; if he has gone out of his way to meet the danger; if he has travelled by unusual roads, or crossed a plain, subject to inundations, when he might have kept the high grounds and been safe, the loss thus occasioned by the rains and floods is a loss from the act or negligence of man, and the carrier is conse-

quently responsible. In short, if the loss or injury be occasioned by an act, which may properly be called an act of God, yet if, by the exercise of reasonable prudence and foresight on the part of the carrier it might have been avoided, he will be liable.

*He is not Liable for Loss or Injury occasioned by the Public Enemy*, and by the public enemy is to be understood enemies at open war, and not merely robbers, thieves, or other private depredators. Losses occasioned by robbery on the highway, or by the depredations and violence of mobs, rioters, insurgents, and other felons, are not deemed losses by enemies; but losses by pirates on the high seas are so deemed, for pirates are the common enemies of mankind.

*He is not Liable for a Loss or Injury occasioned by the Fraud, Misrepresentation, or Concealment of the Owner.* — If the owner is guilty of any fraud or imposition in respect to the carrier, by treating the goods as of little value, or by packing and sending them so carelessly and in such manner as to induce the carrier to take less care of them than he otherwise would, and they are thereby lost, he will not be liable, especially if this concealment of their true value was practised for the purpose of getting them carried at a less rate.

Where the owner represents to the carrier that the package is of a particular value, he cannot recover from him in case of a loss, at the most, any amount beyond that value; and in the case of a gross misrepresentation probably the carrier would not be liable to any extent.

Where, however, any thing is delivered to a carrier for conveyance, it is the duty of the carrier to ask such questions about it as may be necessary; if he ask no questions, and there be no fraud or concealment practised for the purpose of deceiving the carrier, he will be liable for its safe carriage and delivery. The person delivering the goods is not bound to disclose what they are unless asked by the carrier. The carrier may ask questions, and if they are answered improperly, so as to deceive him, then he will not be liable.

*Effect of Notices that "All Baggage will be at the Risk of the Owners," &c., and to what Extent Carriers may Limit their Liabilities.* — The liability of the car-

riers cannot be changed or varied by them by means of any express or implied contract with the owners. They will be responsible for all losses not occasioned by the act of God, the public enemy, or the fault of the owner, notwithstanding they have given the owner notice that they will not be responsible. Notices that "*All baggage is at the risk of the owner,*" or that "*The proprietors of the railroad, (or other conveyance,) are not responsible for goods left with them for transportation,*" or any exceptions, as "*danger of fire, &c., excepted,*" are of no effect, the carrier's liability remaining unchanged.

They may, however, make all reasonable rules and regulations for their safety and protection. They may prescribe the manner, place, and time of receiving goods; may regulate the mode of entering them, and the minuteness of the description to be given; and they may charge a rate of carriage proportioned to the value of the article tendered to them for conveyance.

They may, therefore, inquire the value of any parcel left with them for conveyance, and charge accordingly, and the owner will be bound by his representation of value. And the carrier may so far limit his liability as to refuse to be responsible for any loss, unless the value of the goods is made known at the time they are entered, and a corresponding price is paid for their carriage.

To obviate the inconvenience of asking questions in each case, and the difficulty of proving the statements made on such occasions, it is usual for carriers to resort to the expedient of advertising in newspapers, and posting on the walls of their offices and depots, public notices to the effect, *That they will not be liable for the loss of money and valuables unless they receive notice of their existence, nor for the loss of ordinary goods and chattels beyond a certain amount, unless the value of such goods is declared and entered at the office, and an increased rate of remuneration paid for their conveyance.* And it is now well settled that a carrier may, by these notices, release himself from his responsibility as an *insurer*, unless he is paid an increased remuneration to cover the risk.

In order that a carrier may avail himself of such a notice, he must be able to prove that the person hiring him

had knowledge of it. The only safe course for the carrier is to announce his terms to every individual who offers goods, and at the same time place in his hands a printed notice thereof. It is usual for some passenger carriers to have printed on their checks their regulations in regard to baggage.

The effect of such notices, in case a person having knowledge of them fails to comply with their terms, is to exonerate the carrier from any loss, where neither he nor his servants have been guilty of negligence. If the goods are lost through their negligence, he is still liable.

*Delivery to the Carrier and the Commencement of his Liability.* — The liability of the Common Carrier commences as soon as the goods are delivered to him or his agent; and in order to charge him with them, it is generally necessary to prove an actual delivery to him, or to some person acting for him.

*A Common Carrier may, at the same time, be a warehouseman,* and if he receives goods to be forwarded, but not until he receives further instructions, and the goods are stored in his warehouse, and are there destroyed, his liability for them will be that of a warehouseman, and not of a carrier. If, however, he places them in the warehouse, not to await further instruction from the owner, but simply to facilitate his business, his liability as a carrier commences with the delivery of the goods to him. (See page 48.)

It is not necessary to a delivery that the goods should be entered upon the freight list. Neither is it material that the goods have not been delivered at the usual time or place, established by the carrier for the reception of goods, if the carrier has accepted them; for his liability is fixed by an actual acceptance of the goods.

This necessity of proving a personal delivery of the goods to the carrier, or his servants, in order to charge him with a loss, may be controlled and varied by his usage and custom in this particular. It is sufficient to prove that they have been delivered in the usual and customary manner. If the carrier, upon the goods being tendered him, directs the person to deposit them in a particular place, and he does so, that is a delivery. So

if the goods are delivered at a particular place, according to the usage of business, and notice of the delivery is given to the carrier, and he does not object, that is a delivery. The carrier may also give notice where he will receive goods, or at what place they may be deposited, and he will be liable for the loss of any goods delivered or deposited in conformity with such notice. But leaving goods in the yard of an inn, where the carrier puts up, or on the wharf, where the vessel lies, without giving the carrier or the master any notice that the goods have been so left for carriage, will not amount to a delivery.

A delivery to a servant of the carrier, who is in the habit of receiving packages, is a good delivery. The liability of carriers for the acts of their servants will be considered hereafter. (See page 14.)

*The Carriage of the Goods.* — The carrier is bound to use reasonable diligence and despatch in the transportation of the goods; and he must proceed without deviation from the usual and ordinary course to the place of destination. He will not be answerable, however, for a delay in the transportation of the goods occasioned by any accident or misfortune, even if it does not amount to an act of God, or of the public enemy, provided he has exercised reasonable diligence and foresight to avoid it.

*Duty of the Carrier to Deliver, and Termination of his Risk.* — The Common Carrier is bound not only to carry the goods safely, but also to *deliver* them safely to the person entitled to receive them. The delivery of the goods is as much a part of his duty as the carriage; and nothing will excuse him but the act of God, the public enemy, or the fault of the owner.

The delivery must be made within a reasonable time. What is a reasonable time, must of course depend upon the difficulties and obstructions which the carrier may meet with during the transportation.

The general rule is, that nothing will free the carrier from liability but an actual delivery to the person to whom the goods are sent. It is not sufficient for him to leave the goods at the place where he stops; he must take them to the residence or place of business of the consignee.

The carrier has a right, however, to regulate the place of delivery by an express contract with his employer; or if it is the course of business to leave the goods at specified places, he may land them there, and give the consignee notice of the arrival and place of deposit. In the absence of any express contract, however, the carrier cannot excuse himself from making a personal delivery of the goods, unless he can show there is a usage to the contrary, so well known and long established, as to render it highly probable that the person dealing with the carrier had knowledge of it. No such usage has been established, I believe, except in the case of railroads, and certain water carriers.

Where the delivery is not made to the consignee, in consequence of some usage to the contrary, the liability of the carrier continues until after *notice* of the arrival of the goods and the place of their deposit has been given to the consignee, and a reasonable time has elapsed for him to take possession of and remove the goods. A notice, even, is not necessary, if the carrier can prove that the uniform usage, and course of business in which he is engaged, is to leave the goods at his usual stopping places, *without notice* to the consignee, and that such usage is of long continuance and notoriety.

The carrier must see, at his peril, that the merchandise is *delivered to the right person*. If the goods are delivered to the wrong person, although upon a forged order, he will be liable. It is the duty of passenger carriers to see that each passenger gets his trunk or baggage at the end of his journey.

The carrier, in order to discharge himself from liability, must tender the goods, *at a proper time and place*. Thus a tender of money, at a bank, after bank hours, or of goods to a merchant, after business hours, and when his men have left the store, is not sufficient. The carrier in such case must keep the goods, and tender them again at a proper time. So he must tender the articles at the residence, or place of business of the consignee, according to their nature. It sometimes happens that upon the arrival of the carrier at the place of destination, the consignee refuses to receive the goods, or is dead, or absent, or is not known and cannot, after due

inquiries, be found ; and in such case, although the liability of the carrier, as such, is at an end, yet he is bound to take reasonable care of the goods till he receives fresh orders from the owner, and he will be liable, if they are injured by reason of any negligence on his part in keeping them. In these cases, the carrier may discharge himself from further responsibility, by placing the goods in store with some responsible third person, at the place of delivery, for and on account of the owner, giving him due notice thereof. When so delivered, the storehouse keeper becomes the bailee and agent of the owner in respect to such goods.

The carrier has a right to demand his freight, upon tendering the goods, and if it is not paid, he is not bound to give up the goods ; but he may store them in his warehouse, or place of business, and he will thenceforward be liable to exercise reasonable care for their safety. (See page 19.)

*Termination of Liability, where Goods are to be carried beyond the Carrier's Line.* — In the absence of any express contract, if a Common Carrier receives goods directed to a place beyond the limits of the place to which he is accustomed to carry and deliver, his liability does not terminate upon the delivery of the goods by him, at the termination of his line, to some other carrier to complete the transportation, but continues until the goods are safely delivered at the place of their destination. If, therefore, the carrier wishes to limit his liability to his own line, he must give notice to the owner or person delivering the goods, that his liability will cease, upon their delivery by him, at the termination of his route, to some other suitable carrier. No notice need be given by the carrier, where such a delivery is in accordance with a long established usage known to the owners of the goods.

*Liability of Common Carriers for the Acts of their Agents or Servants.* — Common Carriers are not only responsible for their own acts, but for those of their servants, porters, warehouse-receivers, &c., who are considered as the carrier's servants, employed by him in the execution of the principal undertaking ; and no agreement between the carrier and his servants affects third

persons. They are liable for the misconduct, want of skill, or negligence of their servants; it is, therefore, no excuse for a carrier that the injury was caused by his servant.

If a person makes a private bargain with the servant of a carrier, by which he and not the carrier is to receive the compensation for the carriage of the goods, the carrier will not be liable for their safe carriage. The carrier cannot, however, exonerate himself from liability on account of the negligence, want of skill, or carelessness of his servants and agents, by any private arrangement by which the servant is to have the compensation paid for the carriage of certain kinds of goods.

A delivery to the servant of the carrier, who is authorized or accustomed to receive goods, is a delivery to the carrier. In short, any act of the carrier's servant or agent, within the scope of his authority, will bind the carrier. If, however, the servant exceeds his authority, the carrier will not be liable. Thus, if the servant should receive and undertake the carriage of goods of a different description from those which he is authorized or accustomed to carry, and such goods should be injured, the carrier would not be liable.

It is not necessary, however, that the goods should be precisely of the same kind and description, that had before been carried for hire, to make the carrier liable for a delivery to his agent; provided they are such as the person delivering them had reason to suppose are fairly within the ordinary scope of the agent's authority to receive and transport.

*Liability of Carriers as Partners and Joint Proprietors.* — Where an association of common carriers is formed, for the purpose of carrying goods or passengers, each member receiving a certain share of the profits, they are treated as partners, and all the members of the association are liable for the contracts made by any one of them, in the regular and usual course of business, as, also, for goods lost or injured on any part of the route, whether all are interested in the means of conveyance or not.

Thus, if for the purpose of establishing a continuous line of communication between distant places, several



individuals or companies should associate themselves together, some furnishing vehicles and agents, and taking charge of one part of the line, and others of other parts, yet each member would be liable with the others jointly, for any loss, although the loss happened on a portion of the road, over which he had no control.

### RIGHTS AND DUTIES OF THE PASSENGER CARRIER.

1st. *His Duty to Receive all Persons Applying.*— A common carrier of passengers is bound to receive all persons applying for a passage; provided there is room for them, and they are willing and offer to pay the regular fare. He may refuse where he has not sufficient room; or where the person applying refuses to comply with the reasonable regulations of the carrier; or is guilty of gross and vulgar habits; or whose character is bad; or whose object is to interfere with and injure the carrier in his business.

He may refuse to receive a passenger, if he has not room; for he must not overcrowd his vehicle, and if he does, a passenger who has engaged his seat may refuse to take it, and sue the carrier for damage. If several engage to have seats together, they cannot be made to occupy separate seats.

He may refuse to receive a person of notoriously bad character or habits, or who is disorderly or intemperate; but, having received such a person in his carriage, he cannot turn him out, or treat him disrespectfully, so long as the passenger conducts himself with propriety.

He may refuse to carry a person whose object in obtaining a passage is to interfere with and injure his business. But he has no right to make a contract with the proprietor of another line, running to another place, that he will not receive passengers coming from such place, unless they come by the line of the proprietor with whom he has contracted; and he cannot refuse to take a passenger, because he came from such place by a different line.

2d. *Duty to Provide for the Safety and Convenience of Passengers.*— The liability of the passenger carrier is not the same as that of the carrier of goods. He does not insure his passengers against all injuries not occa-

sioned by the act of God, or the public enemy. If an injury happens to a passenger, by mere accident, without any fault on the part of the carrier, or his servant, he is not liable. Passenger carriers are bound, however, to the utmost care and diligence of very cautious persons for the safety of their passengers; and will be answerable for any injury caused by the slightest fault or neglect on their part, or on the part of their servants.

Great care must be taken to provide strong and well made vehicles, and to furnish them with all necessary trappings and equipments. The carrier's vehicles must, in other words, be *road-worthy*. If an accident happens by reason of a defect in any part of the carriage or equipments, which might have been discovered by a most careful and thorough examination, he will be liable. He must have the vehicle and equipments frequently examined to see that they are safe; and such examination must be careful and thorough. Thus, in the case of stage-coaches, it has been held that the examination must be made previous to every journey.

The carrier must provide good and steady horses, or strong and well constructed machinery, as the case may be. He must see that the vehicle is not overloaded, nor improperly loaded. He must provide a sufficient number of skilful and experienced servants, of good character and temperate habits; and he will be liable for any injury caused by the fault of his servants, and also for all the acts of his servants, where those acts are within the scope of their authority.

The carrier must not start until the passengers have time to be seated; and he must prosecute his journey by the usual and customary route. He must not drive at an immoderate speed; and if an accident happens in consequence of his unnecessarily passing along unsafe parts of the road, or through narrow or dangerous passages, or by reason of his taking the wrong side of the road, he would be liable. Before passing over a dangerous place, the carrier should inform the passengers of the extent of the danger.

The carrier must observe the law or custom of the road as to the meeting and passing of vehicles, and if a collision takes place by reason of his negligence in this

respect, he will be liable. He must, however, deviate from the law of the road, in a case where, by pursuing it, a collision would ensue.

If by the fault of the carrier or his servant, the passengers are placed in such a state of peril as to be justly alarmed for their safety, and they leap from the vehicle and are hurt, the carrier will be liable, although if the passengers had remained in the vehicle, they would have been safe.

The carrier must stop at the usual places, and allow the usual intervals for refreshments; and he cannot vary and annul these accommodations at his pleasure, as every passenger is understood to contract for the usual reasonable accommodations.

He must convey the passengers to their places of destination, and leave them at the usual stopping-places. If he agrees to take a passenger to a particular place, he must do it; and an accident happening to his vehicle will not excuse him, for in such case he is bound to provide another conveyance. If it is the custom to carry passengers to their homes or lodgings, the carrier must do it. It is also his duty to see that each passenger gets his trunk or baggage at the end of his journey.

*3d. Rights of Passenger Carriers.*—The passenger carrier has his rights as well as his liabilities. He may demand his fare in advance, and refuse to receive a passenger unless the fare is so paid. He has a lien upon the baggage of the passenger for his fare, and may detain it until the fare is paid; he has no lien, however, upon the person of the passenger or upon the clothes he has on. The carrier may make and enforce such regulations as are reasonable and necessary either for the convenience and comfort of the passengers, or for the successful prosecution of the carrier's duties.

*Liability of Passenger Carriers for the Baggage of their Passengers.*—The passenger carrier is bound to carry the baggage of the passenger safely, and if any loss or injury happens to it, he will be liable unless it was caused by the act of God, the public enemy, or the fraud of the owner. (See pages 7, 8.) He is thus liable, although the passenger has paid no distinct price for the

transportation of his baggage; for the price paid by the passenger for his fare is considered as including a compensation for carrying his baggage.

His liability commences with the delivery of the baggage to him or to his servant. If it appears that the baggage was never delivered to the carrier or his servants, nor in any way entrusted to his or their keeping; but that it was kept in the hands and under the care of the passenger, the carrier will not be liable.

His liability terminates with the delivery of the baggage to the right person. The carrier must see that each passenger gets his baggage at the end of his journey, and the whole duty in this respect rests with him. The passenger need not expose his person in a crowd or endanger his safety, in the attempt to designate or claim his property; and if the carrier delivers the baggage to a wrong person, or by mistake, or even upon a forged order, he will be liable. The exercise of ordinary care in marking the baggage, entering it upon a way-bill, and delivering a check ticket to the owner, renders the discharge of this duty easy.

If the delivery be made in conformity to a well established and notorious usage, known to the passenger, the carrier will be discharged.

In regard to railroads and steamboats, passengers must demand their baggage within a reasonable time, otherwise the strict liability of the carrier as such ceases. He must, however, in such case, store the baggage and take reasonable care for its safety.

The extent to which carriers may limit their liability, and the effect of notices that "All baggage is at the risk of the owner," has already been considered. (See p. 9.)

The carrier has a lien upon the baggage of the passenger for his fare, and may detain it until the fare is paid.

The rule that the price paid by the passenger for his fare, renders the carrier liable for his baggage, does not extend to anything beyond ordinary baggage, or such things as a traveller usually carries with him for his personal convenience in the journey. It neither includes money nor merchandize. It will include, however, all such articles as are usually carried by travellers for their convenience or amusement. Thus, it is not confined to

wearing apparel, brushes, razors, writing apparatus, and the like, but includes books carried for his instruction or amusement, also his gun or fishing tackle. So a watch is part of a traveller's baggage, and his trunk is a proper place to put it in; so money to pay travelling expenses may be deemed baggage.

Any articles, therefore, which are not strictly baggage must be entered by the owner as freight, and a distinct price paid for the carriage, otherwise the carrier will not be liable.

*The Carrier's Lien upon the Goods for his Fare or Freight.* — The carrier, as we have seen, has a right to demand his pay upon receiving the goods. Where he does not receive his pay in advance, he has a *lien* upon the goods for his pay, that is, a right to detain the goods until he receives or is tendered his hire for their conveyance.

The carrier has no right of lien for anything beyond the price of the carriage of the goods conveyed. He cannot detain them until he has received, not only the price charged for their conveyance, but also the payment of a general balance due him, for the conveyance of other goods on some former occasion.

Where a part of the goods have been delivered to different persons the carrier cannot retain the residue, so as to make one consignee pay freight for what was delivered to another, although the goods formed originally but one entire consignment. But when the whole is to be delivered to one person, under a single consignment, then, although a part has been delivered, he may retain the residue, until the freight for the whole be paid him.

A common carrier of passengers and baggage has a lien upon the baggage, for the payment of the price of the carriage of the passenger, as well as of his effects; but he has of course no right to detain the person of the passenger, or the clothes he is actually wearing.

If the carrier once parts with the possession of the goods, he loses his lien. But if he loses the possession of them by fraud, the lien revives if possession is recovered.

*Common Carriers' Charges.* — These must be fair and reasonable, according to the ordinary and customary rate

of remuneration. They cannot charge more than the customary hire, but there is nothing to prevent them from charging less. If a person sends to a carrier's office to know his rate of charge, the carrier is bound by the representations there made by his clerk, and if goods are sent upon the faith of such representations, the carrier cannot charge more than the sum named, although the clerk may have inadvertently fallen into a mistake.

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## CHAPTER II.

### LIABILITIES OF FERRYMEN, CANAL BOATMEN, STAGE-COACHMEN, WAGONERS, & CARMEN.

FERRYMEN, who carry goods or passengers as a business, are liable to the same extent as other common carriers or passenger carriers. It will be sufficient, therefore, to direct the reader to that part of the work where the general subject is treated. (See Chapter I.)

*Ferryman* are the legal judges whether it is safe to pass over or not. They must have their boats so made, that all drivers and carriages can easily enter them. It is their duty to regulate the mode in which carriages are to be received into a boat; and if a person request direction and assistance, and the ferryman refuses, but tells him to proceed, and he thereupon enters the boat, and the goods are lost or damaged in the attempt, the ferryman is answerable; and as soon as a carriage is fairly on the slip, or drop of the boat, though it be driven by the owner's servant, it is considered to be in the ferryman's possession, and he is responsible for any subsequent loss or damage that may happen to it, or to the horses.

*Canal-boatmen* are also common carriers, and their rights, duties and liabilities are the same as those of other carriers. (See Chapter I.)

Where it is customary to leave goods on the dock, near a canal boat, to be carried, notice of the delivery should be given to the boatmen, otherwise it will not be such a delivery to them as will render them liable. (See p. 10.)

We have seen that carriers must use all reasonable expedition in transporting the goods. If, however, they are

delayed from any cause, which they could not guard against by the exercise of reasonable diligence and foresight, they are not liable. Thus, where the canal freezes up, and occasions delay, the boatmen will not be liable for such delay; they are, however, bound to exercise due diligence in accomplishing the transportation as soon as the obstruction is removed. In the meantime, they must not be guilty of any negligence in taking care of the article detained.

*Stage-coachmen, Wagoners, Carmen, Handcartmen, Truckmen, &c.*, are liable the same as other common carriers, for all losses not occasioned by the act of God, the public enemy, or the fault or fraud of the owner. They have, therefore, only to turn to the General Law in Relation to Carriers, to ascertain their duty to receive goods, the commencement, extent, and termination of their liability, and their right to retain the goods until paid for their carriage, &c.

The rights, duties, and liabilities of the *Proprietors of Stage-coaches*, as carriers of goods or parcels, or of passengers and their baggage, are the same as those of other common carriers, or passenger carriers; and it will be sufficient to refer such persons to the first Chapter where the general subject is treated.

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## CHAPTER III.

### LIABILITIES OF RAILROAD COMPANIES.

*OBLIGATION to take Freight, and extent of Liability in relation thereto.*—Railroad Companies, as Common Carriers, are bound to receive all goods offered to the extent of their means of transportation, provided they are such as are usually carried by them, and the person who offers the goods is ready and willing to pay the regular or a reasonable compensation therefor. It is better, in case of a refusal to receive the goods, for the person offering them, to tender the price for carriage, though it has been held, that an averment of a readiness and willingness to pay is sufficient.

They are not bound to receive goods, which they are not accustomed to carry, or when their cars are full, or when the goods are brought at an unseasonable time, or unless the price is tendered.

The goods having been placed in the hands of their agents, they are bound to transport them safely to the place of destination, without unnecessary delay, damage, or loss, unless by act of God, or a public enemy. They are, in fact, regarded as *insurers* of the property committed to their care, and are bound to make restitution for any injury or loss not caused by the act of God, or the public enemy, or the fault of the owner. What is deemed an act of God, or of the public enemy, or the fault of the owner, has already been considered. (See pages 7, 8.)

The duty of Railroad Companies, as to the *delivery of the goods* transported on their roads, is somewhat different from that of other common carriers. The general rule is, that common carriers are bound to make an actual *delivery* of the goods to the person entitled to receive them; but as from the very nature and construction of a railroad, it would be impossible to deliver goods to persons off of the line of the road, without employing other means of conveyance in addition thereto, it has been held that it is sufficient for them to land the goods in their depots or warehouses along the road, and that then their duty as common carriers is at an end.

In consequence, however, of the great amount of goods transported, and belonging to so many different persons, and of the different hours of arrival, by night as well as by day, it is necessary that the goods should be unloaded, and deposited in a safe place, protected from the weather, and from exposure to thieves and pilferers.

But, although the liability of Railroad Companies, as Common Carriers, is at an end, when they have deposited the goods, remaining uncalled for on their arrival, in their warehouse or depot, yet they are still liable, as *warehouse-men*, to use all proper care and diligence to prevent the goods coming to any injury or harm. (See p. 48.)

The extent to which companies are liable for the acts of their servants in receiving goods, and in transporting them, will be considered hereafter. (See page 27.)



*Their Duty and Liability as Passenger Carriers.*—

We have seen, that in regard to the carriage of goods, railroad companies are liable for all losses not caused by the act of God or the public enemy; but in regard to passengers their liability is different. They do not warrant the safety of their passengers, but only that they will provide for their safety as far as human foresight and care can go.

They impliedly warrant, that the road is in good travelling order, and fit for use; that their engines and cars are roadworthy; that their engineers, conductors, and other servants, are skilful and competent for the business in which they are engaged; and that, in short, every possible care has been taken to secure the safety of the passengers.

If an accident happens from any negligence on their part, or on the part of any of their servants, they will be liable. And where the accident is caused by a defect in their cars or engine, which might have been discovered and remedied upon the *most careful and thorough examination*, they will be liable. But if the accident arises from a hidden and internal defect, which a careful and thorough examination would not disclose, and which could not be guarded against by the exercise of a sound judgment, and the most vigilant oversight, then they are not liable for the injury, and the misfortune must be borne by the sufferer.

In regard to stage coaches, it has been held, that the vehicle must be carefully examined previous to every journey. What amount of diligence, in this respect, would be required of railroad companies, has never yet, to my knowledge, been decided; but without doubt the utmost care and diligence would be required of them.

*Duty to receive Passengers.*— Railroad companies are bound to receive all persons who apply for passage, and tender the regular fare, provided they have suitable accommodations. This rule is, of course, subject to the qualification, that the person applying is not an unfit person to be received as a passenger; for they may rightfully exclude all persons of bad character or habits, or whose objects are in any way to interfere with the interest or patronage of the proprietors, or who refuse to obey

all reasonable regulations; and they may rightfully inquire into the habits or motives of passengers, who offer themselves.

It is the right and duty of a company to make such regulations, as shall secure the comfort and convenience of the passengers, and repress and prohibit all disorderly conduct; and all regulations made by the superintendent, tending to that end, may be enforced.

Thus, it has been held, where the passengers are annoyed, or the railroad officers are hindered in the discharge of their duties, by the entrance of innkeepers or hackmen into the depot or upon the platform, for the purpose of soliciting the patronage of the passengers, the superintendent may make a regulation to prevent persons from coming there for that purpose; and if any person, having knowledge of such regulation, should attempt to violate it, he may be ejected from the depot, no more force being used than is necessary for that purpose. And an innkeeper, who, having notice of such regulation, repeatedly violated it, afterwards purchased a ticket, with the intention of entering the cars as a passenger, and the superintendent, not knowing that fact, but believing he had entered the depot to solicit passengers, orders him out, and he does not show his ticket, nor give notice of his real intention, but presses on towards the cars, and the superintendent with his assistants puts him out, using no more force than is necessary, such removal is justifiable.

It is hardly necessary to state, that they have a right to make and enforce reasonable regulations as to the conduct of the passengers, the exhibiting of tickets or passes to the conductors, &c., during the passage.

Where none of the above-mentioned legal excuses exist, they must receive all who require a passage, if they have room. And it will be no sufficient legal excuse, that the company has contracted with another company, that it will not carry passengers applying for passage, on certain days, if they have patronized any other mode of conveyance.

The company have a right to demand the fare at the time the passenger engages his seat; and if he refuse, they may fill up his place with other passengers. They

have also a lien upon the baggage of a passenger for his fare, but not on his person, nor on the clothes he is wearing.

They must not take such a number as to over-crowd the passengers. They are bound to allow the accustomed periods of refreshments on the road; and if a passenger should be improperly left on the road, they would be liable for the damage thus occasioned him.

*Liability for Baggage of Passengers.*—They are liable for all losses or injuries to the baggage of the passenger, not occasioned by the act of God, the public enemy, or the fault of the owner. This liability is the same, although no distinct price is paid for the carriage of it; as the price paid by the passenger for his fare is considered as including a compensation for carrying his baggage.

Their liability does not commence until the baggage has been actually delivered to their agents. Thus, if a passenger, instead of delivering his valise to the baggage-master or other suitable agent, should take it with him into the cars, keeping it under his control, the company would not be liable for its loss, as it was never delivered to them or their agents. If, however, it can be shown that the baggage was delivered in the usual and customary manner, that is sufficient.

Their liability does not terminate until the baggage is delivered to the owner. If they should deliver it by mistake, or upon a forged order, to the wrong person, they would nevertheless be liable to the true owner for it. The passenger need not expose his person amidst the crowd usually thronging around the baggage office, on the arrival of the cars at the depot; or endanger his safety in order to point out or claim his property; for it is the duty of the baggage-master to see, at his peril, that the baggage is delivered to the right person. All mistakes may however be easily avoided, by having the freight properly marked when delivered to him, and a check-ticket given to the owner.

A passenger must however demand his baggage within a reasonable time; otherwise the liability of the company, *as carriers*, ceases. But all liability on their part does

not then cease; for they must store it, in their warehouse or baggage-room, and use reasonable care for its safety.

The rule, that the price paid by the passenger for his fare, renders the company liable for his baggage, does not extend to anything beyond ordinary baggage, or such things as a traveller usually carries with him for his personal convenience in the journey. It neither includes money nor merchandize. It will include, however, all such articles, as it is usual for travellers to carry for their convenience or amusement. Thus, it is not confined to wearing apparel, brushes, razors, writing apparatus, and the like; but includes books carried by him for his instruction or amusement, also his gun or fishing tackle. So, a watch is part of a traveller's baggage, and his trunk is a proper place to carry it in; so money to pay travelling expenses may be deemed baggage.

Any article, therefore, which is not strictly baggage, must be entered by the owner as freight, and a distinct price paid for their carriage, otherwise the company will not be liable.

They have a lien on the baggage, as a security for the payment by the passenger of his fare. But they cannot detain the person of the passenger, or the clothes he is actually wearing; and if they once part with the possession of the passenger's baggage, they lose their lien upon it, unless they lost the possession by fraud.

*Duty to Provide Faithful and Competent Servants.*— Railroad companies are bound to provide servants competent to discharge the duties assigned to them. Their engineers, for instance, must be skilful, and capable of taking care of and driving their engines; so, also, with their conductors, brakemen, switch-tenders, &c.; they must be men every way qualified to perform their respective duties.

They must not employ servants of intemperate habits; and if a servant in their employ is known to have been guilty of intemperance, or to be unskilful, or negligent, or remiss in his duties, he should be immediately discharged; otherwise, if an accident is occasioned thereby, the company will be liable to exemplary damages.

They are not only bound to employ skilful servants, but to have a sufficient number to meet the wants of the

road. In some of the States there are express laws regulating the number of brakemen, &c., to be employed by the company.

*Liability for the Acts of their Servants.*—It is hardly necessary to state, that they are liable for any accident occasioned by the fault of their servants, or the want of proper servants, or by reason of their not having complied with the statute regulations of their own state.

They are liable for all contracts made by their servants or agents which come within the scope of such agent's authority. Thus, they are liable for the acts and default of the freight or baggage-master in regard to all goods usually carried by them, and for all baggage, which may be placed in his hands, from the time he receives it, until it is properly delivered; and they cannot exonerate themselves from this liability to the owners, by any agreement between themselves and their servants. Neither will the manner in which the servants may be hired, affect their liability in this respect. Thus, if they should agree to pay their baggage-master a certain sum of money per month, and all the compensation received for the carriage of small parcels, they would nevertheless be liable for the loss of any such small parcel, unless the owner knew of this arrangement, and expressly contracted with the baggage-master as principal.

If a private bargain is made with the baggage-master for the carriage of a parcel, and a gratuity is paid him for the carriage, which is not intended by the parties to find its way into the pockets of the company, they will not be liable for its loss. So, if the goods offered are not such as are usually carried by the company, or such as the owner had reason to suppose came within the baggage-master's authority to receive and transport, and he does receive them, the company will not be liable. Thus, if the company never authorized the carriage of bank bills over their road, and never knowingly received freight therefor, they would not be liable for the loss of a package entrusted to the baggage-master.

The general rule is, as stated above, that they are not only liable for the unfaithfulness, want of skill, or negligence of their servants, but also for all the acts of their

servants, when those acts come within the scope of their authority.

*In Massachusetts*, any Engineer, Fireman, or other agent of any Railroad Corporation who is guilty of negligence or carelessness, whereby any injury is done to any person or corporation, is liable to be punished by imprisonment for a term not exceeding twelve months, or by a fine not exceeding \$1000.

Every Railroad Corporation is forbidden to run a passenger train, unless there is a trusty and skilful brakeman to every two cars in the train.

Every Railroad Corporation is forbidden to run a freight train, unless the hindmost car of the train is provided with a sufficient brake, and there is permanently stationed on such car, a trusty and skilful brakeman.

*In Maine*, any Engineer, Fireman, or other agent of any Railroad Company, or any person employed in conducting the trains, by whose negligence or carelessness an injury is done to any person or corporation, is liable to be punished by imprisonment not exceeding one year, or by fine not exceeding \$1000.

If the life of any person is lost through ignorance or gross neglect on the part of the Engineer or Conductor, or other person having charge of the engine, or any car or train of cars, the Railroad Proprietors forfeit a sum not exceeding \$2000, to be paid to the executor or administrator of the deceased.

*In Connecticut*, and *New York*, a receipt or check for the baggage must be given to every passenger requiring it, under a penalty of \$10.

*In New York*, every Agent, Engineer, Conductor, or other person in the employ of the Company, through whose wrongful act, neglect, or default the death of a person has been caused, is liable to be punished by imprisonment, in the State prison, not exceeding five years or in the county jail not exceeding one year, or by fine not exceeding \$250, or by both fine and imprisonment.

The personal representatives of a person thus killed, may receive such damages, not exceeding \$5000, as a jury may think fair and just; the action to be commenced within two years from the accident.

## CHAPTER IV.

## LIABILITIES OF EXPRESS-MEN.

THE *Rights*, and *Duties*, and *Liabilities* of that numerous and important class of Carriers, known as "*Express-men*," do not vary from those of other Common Carriers. These will be here stated, with reference to the pages where the same subject has been more fully treated.

The express-man is bound to receive all goods offered of a similar description to those which he is accustomed to carry, if he has room in his vehicle, and the person offering them is ready and willing to pay the usual or a reasonable freight in advance. He may regulate the place, time, and manner of receiving goods, and is not bound to receive them until he is ready to carry them. But if he receives the goods, he will be liable, although not delivered according to his regulations. (See pages 6, 7.)

The liability of the express-man commences with the delivery of the goods to him. To charge him with a loss, it must be shown that the goods were in his care; it is therefore generally necessary to prove that they were delivered to him or his servant, or that they were delivered in the usual and customary manner. (See pages 10, 11.)

The express-man is bound to carry the goods, with all reasonable expedition, to the place of their destination, and deliver them to the person to whom they are directed. He will be liable for any loss or injury that may happen to them before they are thus delivered, not occasioned by the act of God, or the public enemy, or the fraud of the owner. (See pages 7, 8.)

Reasonable expedition is required in the carriage and delivery of the goods; but the express-man will not be liable for a delay occasioned by any accident or misfortune, which he could not guard against by the exercise of reasonable care and foresight. (See page 11.)

The liability of the express-man does not cease, until the actual delivery of the goods to the person entitled to receive them. The delivery of the goods is as much a part of his duty as the carriage. In the absence, therefore, of any express contract or of any well established

custom regulating the place and manner of delivery, the express-man must make a tender of the goods to the person to whom they are sent; and such tender must be made at a proper time and place. I am not aware of any custom which relieves the express-man from the necessity of making an actual delivery. If the delivery is made to the wrong person, he will be liable. (See pages 11, 12, 13.)

Where the consignee refuses to receive the goods, or is dead, or absent, or cannot be found, the liability of the express-man as a carrier is at an end; but he must nevertheless take reasonable care of the goods. (See page 13.)

The express-man may demand his freight upon tendering the goods, and if it is not paid, he need not give up the goods, but may keep them until it is paid. In such case, he must take reasonable care of the goods. (See page 13.)

Where the express-man receives goods directed to a place beyond the limits of the place to which he is accustomed to carry and deliver, his liability does not terminate upon the delivery of the goods by him, at the termination of his line, to some other carrier to complete the transportation, but continues until the goods are safely delivered at the place of their destination; unless, by express contract or usage, his liability was to cease upon their safe delivery to another carrier. (See pages 13, 14.)

The express-man cannot free himself from his liability to carry and deliver the goods safely, by any notice that the goods are to be at the sole risk of the owner. He may, however, establish regulations requiring the person offering goods to disclose their value, and to pay a corresponding price for their carriage, and he will not be liable, if a person having knowledge of such regulations, fails to comply with them. (See pages 9, 10.)

He is liable for the faults and negligence of his servants, and also for the acts of his servants, where those acts are within the scope of the servant's authority. (See page 14.)

Where several express-men associate themselves together for the purpose of forming a continuous line between distant places, each one of them will be liable with the others for a loss happening on any part of the route. (See page 14.)



## CHAPTER V.

## LIABILITIES OF OWNERS OF STEAMBOATS.

*LIABILITY of the Owners of Steamboats carrying Freight.*—The owners of steamboats form quite an important class of common carriers. If they employ their boat solely in carrying passengers, then they only incur the liability of passenger carriers; but if, as is ordinarily the case, the steamboat is employed in the carriage, not merely of passengers, but of goods and merchandize on freight, then the owners will incur the liabilities of common carriers as to all such matters within the scope of their employment and business.

The general rules regulating the duties and liabilities of common carriers, as heretofore stated, are applicable to the owners of steamboats, who carry goods and merchandize, as well as passengers; and they are as follows:

They are bound to receive all goods offered for transportation, which are similar to those which they are accustomed to carry; provided the person offering them is ready and willing to pay the freight, and the boat is not full. (See page 6.)

They may regulate the time and manner of receiving goods, but are not bound to receive them until they are ready for their carriage. (See page 6.) Their responsibility begins with the delivery of the goods to them or their agents; and from that time until the goods are delivered at the place of their destination to the proper person, they will be liable for any loss or injury not occasioned by the act of God, or the public enemy, or the fraud of the owner.

Thus, a loss from theft, from the fault or fraud of their servants, or from accidental fire not occasioned by the act of God, &c., must be borne by them. So they are liable for a delivery by them or their servants to a wrong person.

As to the commencement and termination of a carrier's liability, and what amounts to an act of God, or of the public enemy, or the fraud of the owner, see pages 7—11

This responsibility for the safe carriage and delivery of the goods, the law will not allow them to avoid. A notice, therefore, that "All goods or baggage are at the risk of the owner," is of no effect, and their liability remains unchanged. They have a right, however, to inquire into the nature and value of the goods left with them for transportation, and to charge a rate of carriage proportioned to their value. A notice, therefore, to this effect, as a notice, *that they will not be liable for goods or baggage over a certain amount, unless the owner discloses their value and pays an increased rate therefor*, is good, and they will not be liable for goods, if the person delivering them fails to comply with this regulation, *provided* they can prove that he had knowledge of the notice. (See page 9.)

*Liability of Steamboat Owners for the Acts and Misconduct of their Servants.*—They are liable for any loss or injury caused by the negligence or misconduct of their servants. They are also liable for all acts of their servants, where they come within the scope of the servant's authority. Thus, a delivery of goods to the servant of the owners, is a delivery to them. If, however, the master or baggage-master undertakes the carriage of goods different from those which he is accustomed to carry, without the consent of the owners, he and not they receiving the price for carriage, they would not be liable. (See page 14.) Thus, in one case, where the company had authorized the carriage of goods, wares and merchandize, and the master undertook the carriage of a package of bank bills, he receiving the compensation, and the company having no knowledge thereof, nor never authorizing the same, it was held that the company was not liable for their loss.

*Liability for the Baggage of Passengers.*—The owners of the steamboat are liable for the safe carriage of the baggage of the passengers, and they will be answerable for any loss or injury not occasioned by the act of God, or of the public enemy, or the fraud of the owner. (See p. 18.) They will be so liable, although no distinct price be paid for the transportation, as the fare paid by the passenger is deemed to include not only his own carriage, but also the carriage of his personal baggage.

Their liability does not commence until the baggage has been actually delivered to their agents. If a person were to take baggage on board with him, and keep it in his own possession, it would be extremely doubtful, whether the proprietors would be liable for its safety; though it is sufficient, if the baggage is delivered in the usual and customary manner. Their liability does not terminate until the baggage is delivered to the right passenger; and he is allowed a reasonable time to demand his baggage. In one case, where it appeared, that though it was usual for passengers, upon the arrival of a line of steamboats at New York, in the night time, to go ashore with their baggage, yet they sometimes remained on board during the night, it was held, that the owners of the boat were liable for baggage left on board through the night, and not called for till the usual hour in the morning. [See pages 9 and 18.]

*The Liability of the Owners of Steamboats as Passenger Carriers.*—Steamboat proprietors, as passenger carriers, are bound to receive all persons applying for passage, and willing to pay the regular fare, provided they have accommodations. They may however refuse to receive any person of bad character or habits; or whose object is in any way to interfere with the interests of the boat; or who refuses to observe all reasonable regulations.

Like other passenger carriers, they are not regarded as insurers of personal safety against all contingencies, except those arising from the act of God and the public enemy. For an injury happening to the person of a passenger by mere accident, without any fault on their part, or on the part of their servants, they are not responsible.

But they are bound to the utmost care and diligence in providing for the safety of their passengers. They must furnish staunch and seaworthy boats, fit for the voyage and the season of the year; engines suitable and proper and in good running order; careful engineers of skill and experience; and officers and men sufficient in number and of competent skill and ability to navigate her. They must carry the passengers by the usual and regular route; and must exercise all reasonable care and fore

sight for their safety during the voyage. In short, they are bound to the utmost care and diligence of very cautious persons; and are responsible for the slightest neglect.

The proprietors, as passenger carriers, have certain rights which they may enforce. They have a right to refuse to carry a passenger, unless he will pay his fare in advance. They have also a lien upon the baggage of a passenger for his fare, but not on his person, or the clothes he has on. They have a right to make and enforce such regulations as are reasonable and necessary for the comfort and convenience of the passengers or for the successful prosecution of the voyage.

#### ACTS OF CONGRESS FOR THE SAFETY OF PASSENGERS ON BOARD OF STEAMBOATS.

THE ACT OF 1852, *1st Sec. provides*, That no license, register, or enrolment under the provisions of this, or the Act [Act of 1838], to which this is an amendment, or other papers shall be issued by any collector to any steamboat carrying passengers, until satisfactory evidence is given that all the provisions of this Act have been fully complied with; and if any such vessel shall be navigated, with passengers on board, without complying with the terms of this Act, the owners thereof and the vessel itself shall forfeit \$500.—The *2d Section* directs inspectors to examine and see that suitable precautions are taken to guard against loss or danger by fire.—The *3d Section provides* for the number of pumps a steamer shall have, the length of hose, &c.—The *4th Section* makes provisions as to the number of boats, and metallic life boats, their condition, &c.—The *5th Section provides*, that each steamer shall have a life-preserver or float for each and every passenger, and a certain number of fire-buckets and axes.—The *6th Section provides* that there shall be convenient access from the lower to the upper deck.—The *7th Section* relates to the carrying of hemp, gunpowder, oil of turpentine, vitriol, camphene, burning fluid, &c., except by license. The penalty is \$100 for violating the provisions of this Section.—The *8th Section provides*, That gunpowder, oil of turpentine, oil of vitriol, camphene, or other explosive burning fluids, and materials which ignite by friction; when put up for shipment shall be securely packed or put up separately from each other, and from all other articles, and marked with the name of the article. Penalty, \$1000 or imprisonment not exceeding 18 months, or both.—The *9th Section* relates to the appointment, qualifications, and duties of two inspectors, &c.

The *10th Section provides*, That in those cases where the number of passengers is limited by the inspector's certificate it

shall not be lawful to take on board of any steamer a greater number of passengers than is certified by the inspectors in the certificate ; and the master and owners, or either of them, shall be liable, to any person suing for the same, to forfeit the amount of passage-money and ten dollars for each passenger beyond the number allowed. And moreover, in all cases of an express or implied undertaking to transport passengers, or to supply them with food and lodging, from place to place, and suitable provision is not made of a full and adequate supply of good and wholesome food and water, and of suitable lodging for all such passengers, or where barges, or other craft, impeding the progress, are taken in tow, for a distance exceeding 500 miles, without previous and seasonable notice to such passengers, in all such cases the owners and the vessel shall be liable to refund all the money paid for the passage, and to pay also the damage sustained by such default or delay. Provided, however, that the vessel shall be released in case a satisfactory bond is given to the marshal, for the benefit of the plaintiff.

The *11th Section* relates to the penalty for obstructing, or loading the safety valve. Penalty \$200 and 18 months' imprisonment.—The *12th Section* relates to the penalty for suffering the water to fall below three inches above the flue. Penalty \$100 and imprisonment 6 or 18 months.—The *13th to the 17th Section provide*, That iron boilers be made of stamped plates, and for the qualities of material ; penalty for using unstamped plates, \$500 ; and for counterfeiting the marks, \$500 and two years' imprisonment.—The *18th to 22nd Section* relate to the appointment of nine inspectors, their duties, pay, expenses, &c.—The *23d and 24th Sections* relate to the duties of Collectors.—The *25th Section* requires that one copy of the Certificates of Inspectors shall be kept posted up in a conspicuous place in the steamboat, where it will be most likely to be observed by passengers and others, and there kept. The penalty for not having such certificates so posted, and for carrying gunpowder, oil of turpentine, oil of vitriol, camphene, &c., without license, or improperly stowed, is \$100.—The *26th and 27th Sections* relate to the penalty on inspector for giving false certificate, and the penalty on master for not conforming to the inspector's certificate in the navigation of his vessel.—The *28th Section* provides for the stopping of steamers navigating rivers only, when from darkness, fog, or other cause, the pilot on watch, shall be of opinion that the navigation is unsafe, or from accident to, or derangement of, machinery of the boat, the engineer on watch, shall be of opinion that the further navigation of the vessel is unsafe ; and the liability of owners for all damage to passengers and their baggage, if no stop is made.—The *29th Section* provides that the supervising inspectors shall establish rules for steamers passing each other, to be observed both

night and day, two copies of which shall be furnished and kept posted in conspicuous places on such vessels. Penalty for non-compliance, \$ 30—and to all damage done to any passenger.

The 30th Section provides, That whenever damage is sustained by any passenger or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel, shall be liable to each and every person so injured, to the full amount of damage, if it happens through any neglect to comply with the provisions of law herein prescribed, or through known defects or imperfections of the steaming apparatus, or of the hull; and any person sustaining loss or injury through the carelessness, negligence, or wilful misconduct of an engineer or pilot, or their neglect or refusal to obey the provisions of law herein prescribed as to navigating such steamers, may sue such engineer or pilot, and recover damages for any such injury caused as aforesaid by any such engineer or pilot.

The 31st to 34th Section relate to fees, &c., of inspectors.—The 35th Section provides, That the master of a steamer shall keep a correct list of all passengers received and delivered from day to day, noting the places where received and landed, open to examination of inspectors, &c. — Penalty for neglect \$ 100.

The 36th Section provides, That every master or commander of any such steamer shall keep on board of such steamer at least two copies of this Act, to be furnished to him by the Secretary of the Treasury; and if the master or commander neglects or refuses so to do, OR SHALL UNREASONABLY REFUSE TO EXHIBIT A COPY OF THE SAME TO ANY PASSENGER WHO SHALL ASK IT, HE SHALL FORFEIT TWENTY DOLLARS.

The 37th to 43d Section relate to penalties on inspectors, pilots, witnesses;—penalties, how sued for and recovered, &c.

ACT OF 1838 provides for the licensing, or enrolment, of steam vessels; for the inspection of boilers, machinery, hulls, &c.;—that the safety valve be opened when the steamer is stopped for any purpose,—under a penalty of \$ 200.;—that one or more signal lights shall be carried by vessels running between sunset and sunrise,—under a penalty of \$ 200.

ACT OF 1849 provides, That vessels, steamboats and propellers, navigating the Northern and Western Lakes shall, during the night, when on the starboard tack, show a red light; when on the larboard tack, a green light; and when going off large, or before the wind, or at anchor, a white light;—steamboats and propellers shall carry on the stem, or as far forward as possible, a triangular light, at an angle of about sixty degrees with the horizon, and on the starboard side, a light shaded green, and on

the larboard side red, and said lights shall be furnished with reflectors, and of a size to insure a good and sufficient light.

ACT OF 1843 relates to the additional steering apparatus, of steamboats, to be used in case the pilot is driven from the wheel by fire.

ACT OF 1825 relates to enrolments, licenses, registers, &c., of steamboats, owned by incorporated companies.

ACT OF 1812 relates to the enrolment and licensing of steamboats, belonging to Aliens, &c.

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## CHAPTER VI.

### LIABILITIES OF CARRIERS BY SEA.

*Carriers by Sea.* — The owners and master of any ship or vessel engaged in a general freighting business are liable as common carriers; and it will make no difference whether the vessel is employed in the domestic or foreign trade, or in the coasting, river, or ocean service. It will make no difference in any case, that the cargo was all furnished by one person, provided the vessel was open to all persons indifferently who offered freight for her port of destination. Neither will it make any difference, that the vessel is employed in carrying a particular kind of goods, if she is open to all persons offering goods of that description.

If the vessel is not engaged in the transportation of merchandize for all persons indifferently, but is employed exclusively by one or more persons, then the owners are not liable as common carriers. So, if the owner of a ship, employing her on his own account, should take merchandize on board for freight, from a particular individual, for his special accommodation, he would not be liable as a common carrier. In such cases, the owners and master are liable merely as private carriers to the exercise of reasonable care and diligence for the safety of goods.

*The Liability of Carriers by Sea.* — Common carriers by sea are liable for all losses not occasioned by the act

of God, the public enemy, or by some excepted perils enumerated in the bill of lading. By the bill of lading the owners and master become bound to deliver the goods at the port of destination, in like good order and condition as when shipped "*danger of the seas only excepted.*"

If no exceptions are made in the bill of lading, the carrier is nevertheless not liable for any loss caused by the act of God, by the public enemy, or by the perils, dangers, and accidents of the seas, rivers, and navigation; but no exception in the bill of lading will exempt him from accidents occasioned by his own negligence and misconduct, or the want of skill or care of the persons whom he has entrusted with the navigation of the vessel.

The phrase "*perils of the sea*" includes such losses only to the goods on board, as are of an extraordinary nature, or arise from some irresistible force, or from some overwhelming power, which cannot be guarded against by the ordinary exertions of skill and prudence. Such are accidents occasioned by the irresistible violence of the winds, and waves, and tides, and currents; by necessary jettison of the goods; by collision where no blame is imputable to either of the vessels; and losses from the irresistible attacks of pirates. For losses not occasioned by the perils of the seas, as losses by embezzlement or theft when not committed by pirates, or by fire, unless occasioned by lightning, &c., the master and owners are liable.

If the loss has been caused by a peril of the seas, yet if, by the exercise of reasonable prudence, skill and foresight, it might have been avoided, the carrier will be liable. In order to determine whether the loss has or has not been occasioned by the negligence or want of care and skill of the servants of the ship-owners entrusted with the navigation of the vessel, the state of the wind, the tide, and the light, the degree of vigilance of the master and crew, and all other circumstances, bearing upon the conduct and management of the vessel, together with the usual and established rules of practice of experienced men under such circumstances, must be considered.

The master and owners generally take care to protect themselves, by the bill of lading, or contract of affreightment, from losses by fire.



*Collisions, when the Carrier is or is not Liable for Losses occasioned thereby.* — If the collision is accidental, without any blame being imputable to those having charge of the vessel, then the owners will not be liable for any loss occasioned thereby. If, however, there has been any negligence in the management of the vessel, or if the collision has occurred from a failure to observe any well established nautical rule, the owners and master will be liable. (The rules regulating the meeting and passing of vessels may be found on page 85.)

*Jettison and General Average.* — The master has authority to throw overboard a part of the cargo, for the purpose of saving the ship and the residue of the cargo, in a case of extreme peril. This right can be exercised only in a case of extremity. [*This subject has been fully treated in the Seaman's Assistant — one of this series, which see.*]

Where the goods are thus thrown overboard, the owners of the ship and the residue of the cargo must contribute *pro rata* towards the loss sustained by the owners of such goods for their common benefit; and the master has a right to detain the goods of the shippers until their proper share of contribution is paid or secured. (The whole subject of general average has been fully treated on page 74.)

*Commencement of the Liability of the Carrier by Sea and his subsequent Duties.* — *Reception and Stowage of Cargo.* — The liability of the owner and master commences with the delivery of the goods to them. If the goods are delivered in the usual and customary manner, that is a sufficient delivery. Where the vessel is lying at a wharf, it is usual to deliver the goods on the wharf, and notify the proper officer of the fact. Any accident happening to goods thus delivered, in putting them on board will fall upon the carrier.

The manner of taking goods on board, and the commencement of the carrier's liability, depend upon the custom of the particular place. Thus, if goods are to be conveyed to the ship by lighters, and it is the custom or according to the contract, that the master is to take them from the quay or beach, then his liability commences at

that place; but if the owners are to deliver the goods at the ship's side, then his liability commences upon the reception of them, in the same manner as when the ship loads at the wharf.

The cargo must be taken on board with care and skill, be properly stowed and dunnaged; and the goods stowed *under deck*; if they are stowed on deck without the consent of the shipper, or without the sanction of custom, they are at the risk of the ship-owners and master, who will be liable for any loss or injury that may happen to them, from whatever cause, notwithstanding the exception in the bill of lading of the dangers of the seas.

If any injury results from bad stowage, the owners and master will be liable, unless the freighter appointed his own stower, or was informed as to the way in which the goods would be stowed.

*Seaworthiness at the Commencement and During the Voyage.*—The first duty of the owners and master is to see that the vessel is seaworthy, that is, tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage; and that she is manned by a crew competent, both in numbers and skill, for the voyage, considering its length and the circumstances under which it is undertaken. If the goods are lost by any defect in the vessel, whether latent or visible, known or unknown, the owner is answerable to the freighter.

The vessel must be kept seaworthy during the voyage, if the master can do so by the exercise of reasonable care and diligence. If she meets with an accident, it is the duty of the owner to see that she is put in complete repair at the next convenient port. If he does not, he must abide the loss; for it is of the essence of his contract, that his vessel shall be able to receive, retain, and transport her cargo. (*See Seaman's Assistant*, page 79.)

*Duty of Carriers to Sail on the Appointed Day.*—As soon as everything is in readiness aboard the vessel, the master is in duty bound to set sail; but he ought not to commence his voyage in tempestuous weather. If the owner agrees that the vessel shall sail by a given day, the vessel must sail on that day, unless prevented by necessity; and by necessity is meant, some cause which the owner could not have prevented, such as head winds, bad weather,

&c., &c.; and not a<sup>\*</sup> delay occasioned by the default or negligence of the owner. And if the owner of the goods is injured in any way, in consequence of the vessel not sailing at the time appointed, he will be entitled to an action against the owner, unless the vessel was prevented from sailing by necessity.

When a vessel is up for freight, it is customary for the owners to advertise the fact, stating in the advertisement that she will sail on a given day. If, upon faith of such advertisement, a person should send goods on board the vessel, and she should not sail upon the day advertised, and he should be damaged by reason of such delay, the owner of the vessel would, probably, be liable for such damage, unless the vessel was prevented from sailing by necessity. We are not aware that the question has been decided by any court, but have no doubt that it would be so held; especially if the master delayed sailing for a long time after the day named in the advertisement. Of course, if, where vessels are advertised to sail on a given day, it is meant, and so understood by the public, that they will sail, not on that particular day, but *on or about that time*, and they sail within a few days of the appointed time, the owners would probably be deemed to have kept their engagement. But if, in such case, they should delay two or three weeks, and the owner of the goods were injured thereby, the owners of the vessel would doubtless be liable.\*

*Commencement and Course of the Voyage.* — When the voyage is ready, the master is bound to sail as soon as the wind and tide permit; but he ought not to set sail in very tempestuous weather.

The master is bound to proceed to the port of delivery without delay and without any unnecessary deviation

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\* The above remarks have particular reference to vessels sailing on long voyages, where it would be almost impossible for the owner to know the exact day on which the vessel will sail. A different rule would prevail, we think, in the case of steamboats plying along our coasts, or on our lakes and rivers. If the owner of a steamboat were to advertise her to sail on a particular day, he would be bound, we think, to sail on that day. Certainly he would have no right to delay her sailing for a week or two after the appointed time, for the purpose of procuring more freight; and if he should do so, and any person putting goods on board the boat should suffer loss thereby, the steamboat proprietors would undoubtedly be liable for such loss. In all cases where the owner wishes to have his goods carried on a particular day he had better make a special agreement with the owner of the vessel, that she shall sail on the day advertised, and then she must sail on that day unless prevented by necessity.

from the direct and usual course ; and if he is forced by perils out of his regular course, he must regain it with as little delay as possible. If the master deviates unnecessarily from the usual and customary track, and the goods on board are lost or damaged, he and the ship-owners will be responsible, although such loss or injury is not proved to have been caused by the deviation.

Nothing but some just and necessary cause, as to avoid a storm, or pirates, or enemies, or to procure requisite supplies or repairs, or to relieve a ship in distress, will justify a deviation from the regular course of the voyage. A deviation merely for the purpose of saving property is not deemed a necessary deviation.

*The Carrier's Duty where the Ship is Stranded, or so Disabled that she cannot Proceed.*—The duties of the owners and master, as common carriers, are not varied after the stranding of a ship ; but their liabilities continue the same as before. They are bound to show that no human diligence or skill could save the property from being lost by the shipwreck ; but that it necessarily perished with the wreck.

If the vessel is so disabled that she cannot be repaired, the master must procure another vessel, if it is in his power to procure a vessel at a port within a reasonable distance, to carry the cargo to its destined port.

If the damaged ship can be repaired within a reasonable time, so as to be able to proceed on her voyage, the master is not bound to procure another vessel, but may retain the cargo until the ship is repaired, and then proceed to complete the carriage of the goods.

*Re-shipment, how the Liability of the Carrier is affected by.*—The privilege of re-shipping the goods in another vessel is sometimes inserted in the bill of lading ; but it does not affect the liability of the carrier for the safety of the cargo during the whole voyage. The privilege of re-shipping is deemed to be for the benefit of the carrier, and his liability does not terminate until the delivery of the goods at the place of their destination.

*Delivery of the Goods by the Carrier and Termination of his Risk.*—The master must deliver the goods to the persons named in the bill of lading, or their assigns ; and for any mistake in this respect, he and the owners are liable.

In the absence of a special contract, or of a well known and long established usage, the mere landing of the goods upon the wharf is not a sufficient delivery to discharge the owners and master from their liability as carriers; but the master must make an actual delivery of the goods at the residence or place of business of the consignee, as the case may be. Such delivery must also be made at seasonable hours; that is, if they are goods to be delivered at the consignee's place of business they must be tendered within business hours. In this respect the duties of carriers by sea and by land are the same. (See page 11.)

In regard to vessels engaged in the foreign trade, it is now well settled, that the contract of the owners and master is merely to carry *from port to port*, and unless it is otherwise agreed, it is a sufficient delivery to land the goods at the usual wharf, and give notice thereof to the consignee; and that after such notice has been given, and a sufficient time has elapsed for the consignee to come and take possession of the goods, the carrier's liability, *as a carrier*, is at an end. But it is the duty of the master to take care of the goods for the owner, unless the consignee is under an obligation to receive them, in which case they will be at his risk.

Goods discharged on any day which custom or law has set apart as a holiday must remain at the risk of the ship until the next business day.

In regard to vessels employed in the coasting and river trade, no such usage, rendering it unnecessary for the master to make an actual delivery of the goods, seems to exist. It has been held, that the liability of the carrier on the Ohio River does not cease by the delivery of the goods on the wharf, and notice given to the consignee. And this would seem to be the law on the Hudson. So there are several cases in the coasting trade, where the master has been held to make an actual delivery of the goods. The master of a vessel employed in the coasting or river trade, if he would release himself from the necessity of making an actual delivery to the consignee, must, therefore, be able to show, that his delivery was in accordance with a usage of that place, so well known and established as to render it probable that the consignee was aware of it.

Where it is customary to deliver the goods upon the wharf, the carrier will not be discharged from liability, until notice has been given to the consignee, and a sufficient time has elapsed for him to come and receive the goods, unless it can be shown to be the well established and uniform usage to land the goods without giving notice.

It sometimes happens, that the consignee refuses to take the goods, or is dead, or absent, or cannot be found; in such case, the master, although his liability as a carrier is at an end, must take reasonable care of the goods, and see that they are properly stored.

The master is not bound to deliver the goods until the freight is paid, as he has a lien upon them for his freight; but he cannot detain the goods on board the ship until the freight is paid, for the merchant ought to have an opportunity to examine the condition of them previous to payment. The master, in retaining goods as security for his freight, is not bound to the strict liability of a carrier for their safety, but is only required to take reasonable care to protect them from loss or injury.

Where a vessel discharges her cargo by means of lighters, and the goods are lost or injured in their passage from the ship to the shore, the loss will fall upon the owner of the goods, if the lighterman is employed and paid by him; but if he is employed and paid by the master or ship-owners, he is then the servant of the latter, and the loss must fall upon them.

*Passenger Carriers by Sea.* — The owners and master of vessels, who hold themselves out as carriers of passengers, are bound, like other passenger carriers, to receive all persons who apply for passage and are ready and willing to pay their fare. They can refuse only in the cases which have been before stated. (See page 15.)

Every person engaging passage is presumed to contract for all the conveniences and accommodations which are usually furnished on such a voyage.

The owners and master are bound to provide a vessel seaworthy in every respect; to pursue the voyage by the usual and regular route, without unnecessary deviation; to keep the vessel during the voyage, to the extent of his power, seaworthy; and to provide all such accommodations during the passage, as are usual on like voyages.

The master's relation to the passengers is one of peculiar delicacy. His contract with them is not for mere ship room and personal existence on board, but for reasonable food, comforts, necessities and kindness. In respect to females, it proceeds yet further, and includes an implied stipulation against general obscenity, immodest conduct, and a wanton disregard of their feelings; and any violation of this implied stipulation, in any of its particulars, will be punished, no less than direct personal assaults.

The master may make and enforce such rules and regulations as are reasonable for the convenience of the passengers, or the successful management or safety of the vessel. Thus, if any passenger violates the peace and good order of the ship, the master may restrain him. So, if a cabin passenger should be guilty of gross impropriety and indecency, or should use threats of violence toward the captain, the captain may exclude him from the table.

The master cannot require the passengers to assist in working the ship. In times of danger and peril, however, the authority of the master is very great, and orders requisite for the safety of the vessel, given by him at such times, must be obeyed as well by the passengers as crew.

Like other passenger carriers, the owners and master have a lien upon the baggage of the passenger for his passage money. (See page 19.)

[The laws passed by Congress for the regulation of passenger vessels are to be found in the *Rights of Seamen*, page 94.]

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## CHAPTER VII.

### BAILMENTS.

BAILMENT, or BAILEMENT, in law, signifies a delivery of goods in trust, on a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee, and the goods re delivered as soon as the time or use for which they were bailed shall have elapsed or be performed.

Bailment consists of five species:—

1. *Deposit*, which is a bailment of goods to be kept for the bailer without a recompense. 2. *Mandate*, which is a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. 3. *Lending for use*, which is a bailment upon a thing for a certain time, to be used by the borrower without paying for it. 4. *Pledging*, which is a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. 5. *Letting to hire*, which is, 1st. a bailment of a thing to be used by the hirer for a compensation in money; or, 2ndly, a letting out of work and labor to be done, or care and attention to be bestowed by the bailer on the goods bailed, and that for a pecuniary recompense; or, 3dly, of care and pains in carrying the things delivered from one place to another for a stipulated and implied reward.

The responsibility of bailees is governed by the consideration whether, in the case of the thing bailed, they have been guilty of ordinary neglect, gross neglect, or slight neglect. *Ordinary neglect* is the omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Gross neglect* is that want of care which every man of common sense, how inattentive soever, takes of his own property. *Slight neglect* is the omission of that diligence which every circumspect and thoughtful person uses in securing his own goods and chattels.

The rules and propositions on which the law of bailments depends may, as *Sir William Jones* observes, be considered as axioms flowing from natural reason, good morals, and sound policy; and are as follow:—1. A bailee, who derives no benefit from his undertaking, is responsible only for gross neglect, or, in other words, for a violation of good faith. 2. A bailee, who alone receives benefit from the bailment, is responsible for slight neglect. 3. When the bailment is beneficial to both parties the bailee must answer for ordinary neglect. 4. A special agreement of any bailee to answer for more or less, is in general valid. 5. All bailees are answerable for actual fraud, even though the contrary be stipulated. 6. No bailee shall be charged for a loss by inevitable accident, or irresistible force, except by special agreement.



From these rules the following propositions are evidently deducible:—

1. A depositary is responsible only for gross neglect ; or, in other words, for a violation of good faith. 2. A depositary, whose character is known to his depositor, shall not answer for mere neglect, if he take no better care of his own goods, and they also be spoiled or destroyed. 3. A mandatory to carry is responsible only for gross neglect, or a breach of good faith. 4. A mandatory to perform a work is bound to use a degree of diligence adequate to the performance of it. 5. A man cannot be compelled by action to perform his promise of engaging in a deposit or a mandate. 6. A reparation may be obtained by suit for damage occasioned by the non-performance of a promise to become a depositary or a mandatory. 7. A borrower for use is responsible for slight negligence. 8. A pawnee is answerable for ordinary neglect. 9. The hirer of a thing is answerable for ordinary neglect. 10. A workman for hire must answer for ordinary neglect of the goods bailed, and apply a degree of skill equal to his undertaking. 11. A letter to hire of his care and attention is responsible for ordinary negligence. 12. A private carrier for hire, by land or by water, is answerable for ordinary neglect.

To these rules and propositions there are some exceptions:—1. A man who spontaneously and officiously engages to keep, or to carry, the goods of another, though without reward, must answer for slight neglect. 2. If a man through strong persuasion, and with reluctance, undertake the execution of a mandate, no more can be required of him than a fair exertion of his ability. 3. All bailees become responsible for losses by casualty or violence, after their refusal to return the things bailed, on a lawful demand. 4. A borrower and a hirer are answerable in all events, if they keep the things, borrowed or hired, after the stipulated time, or use them differently from their agreement. 5. A depositary and a pawnee are answerable, in all events, if they use the things deposited or pawned. 6. An innkeeper is responsible for the acts of his domestics, and for thefts, and is bound to take all possible care of the goods of his guests, and is chargeable, although not informed that the goods are in his house. He is regarded as an *insurer*, responsible for

any injury or loss, not caused by the act of God, the common enemy, or the neglect or fault of the owner. When however, a guest has the exclusive keeping and occupancy of a room, the innkeeper is not liable, nor where he takes upon himself the care of the goods, or neglects to use ordinary caution. 7. A common carrier, by land or by water, must indemnify the owner of the goods carried, if he be robbed of them. But it is no exception, but a corollary, from the rules, that "every bailee is responsible for a loss by accident or force, however inevitable or irresistible, if it be occasioned by that degree of negligence for which the nature of his contract makes him generally answerable."

*Warehouse-men* are bound only to take reasonable and ordinary care of the goods deposited with them. Thus, they would not be liable for thefts, or for loss or injuries caused by rats, unless occasioned by their want of proper care, &c. Their liability commences as soon as the goods arrive, and the crane of the warehouse is applied to hoist them in.

A person may act both as a warehouse-man and as a common carrier, and it is sometimes a question of considerable nicety to decide in which character he is answerable in case of an accident. The general rule would seem to be, that if he receives goods to be carried by him after he shall have received further orders respecting them, and he stores them in his warehouse in the meanwhile, and they are there lost, his liability will be that of a warehouse-man; that is, he will not be liable for the loss, if he has used ordinary care for their safety. But if the goods are placed in his hands as a carrier to be transported by him without further orders, and he places them in his warehouse, as a convenience or security to himself, or at the intermediate station on his route, and they are there lost, his liability will be that of a common carrier.

The warehouse-man must be careful not to deliver to the wrong person, if he does he will be liable.

*Wharfingers and Forwarding Merchants* are liable to the same extent as warehouse-men.

It is not well settled, whether warehouse-men and wharfingers have a lien upon the goods deposited, for their storage and wharfage, although the better opinion, is that they have.

## CHAPTER VIII.

## LIABILITY OF CONSIGNOR AND CONSIGNEE.

*Liability of Consignor.* — The Consignor is responsible by law to the Carrier for his charges in the carriage of the goods, and the Carrier may consequently maintain an action against him for their amount. And it has been held that the usual clause in a bill of lading, engaging the master of the ship to deliver the goods to the consignee, or his assigns, "*he or they paying freight for the said goods,*" is introduced for the benefit of the carrier of the goods only, and merely to give him the option, if he thinks, fit, to insist upon his receiving freight abroad before he delivers the goods; and that if he waives the benefit of that provision in his favor, and delivers the goods, without first receiving payment, he may notwithstanding such delivery, recover the amount of his charges from the *consignor*. This is the rule where the goods belong to the consignor, and are shipped on his account. It would seem, however, that if the goods were not owned by the consignor, and were not shipped on his account, and for his benefit, that the carrier, where the bill of lading contained this clause, would not be entitled to call on the consignor for freight. It is better for the master of a vessel, in all such cases, to endeavor to get the freight from the consignee, and thus avoid the possibility of mistake.

*Liability of Consignee.* — If a person receive goods in pursuance of a bill of lading, in which it is expressed that the goods are to be delivered to him, he paying freight, he, by implication, agrees to pay freight, and may, consequently, be sued therefor, either by the master or shipowner, unless he is a mere agent receiving the goods on behalf of a known principal, and unless the goods have been shipped on board under a charter-party of affreightment, by which the charterer himself has covenanted to pay the freight. A consignee (not the owner) of goods receiving them in pursuance of a bill of lading, whereby

the ship-owner agrees to deliver them to the consignee, by name, he paying freight, is not liable for *general average*, although he has had notice, before he received the goods, that they have become subject to that charge. It would seem that the consignee would be so liable if the consignor had, by the bill of lading, made the payment of general average a condition precedent to the delivery of the goods.

*Whether the Consignor or Consignee may sue the Carrier, in Case of a Loss.* — It is sometimes difficult to decide, from a bill of lading, whether an action against the master or owners of a ship, for loss or injury occasioned by his or their negligence, should be brought by the consignor or the consignee.

It is a general rule that actions against ship-owners, as carriers, on their implied contract, and actions for the loss or injury of the goods entrusted to them, must be brought by a person who has some property in the goods.

Where goods are sent by a seller to a buyer, the delivery of them to the carrier usually vests the property in the latter, and he is the person to sue the carrier for the loss of them. And if the consignor acted as the agent of the consignee in the purchase of the goods, and delivered them to the carrier, to be conveyed at the risk of the consignee, the action against the carrier for a loss should be brought by the consignee and not by the consignor.

But if by the terms of dealing between the consignor and consignee, the latter is not to acquire a property in the goods, and they are to remain at the risk of the consignor until actual delivery; or if the consignee procured the goods to be consigned to him by fraud, so that no property in them passed to him, the consignor may sue. So, if goods are sent by a carrier merely for approval, the property not passing to the consignee until he receives and adopts the goods, the consignor is the person to bring the action against the carrier.

If the person to whom the delivery is ordered is only an agent of the shipper, and has no property in the goods, it would seem, in such case, that the consignor, and not the consignee, is the proper party to sue.

Cases may occur where the consignor and consignee both may have a property in the goods; as where the

goods are shipped by the consignor to be sold on his own account, and the consignee or agent has made advances on the consignment. In such case, it would seem that they might, either of them, bring an action against the carrier. And though by a delivery to the carrier the property vests in the purchaser, yet, if a special contract has been entered into between the carrier and the consignor, whereby the consignor agrees to pay the carrier for the safe carriage and delivery of the goods, the consignor is entitled, as well as the consignee, to sue the carrier for a loss.

*The Extent to which the Bill of Lading is binding upon the Ship-owner and Master.*—The bill of lading is the written acknowledgment of the master that he has received the goods from the shipper, to be conveyed on the terms therein expressed to their destination, and there delivered to the parties therein designated; and though it is signed by the master, he does it as agent for the owners, and it is a contract binding upon them. The bill of lading usually contains among other things, the amount and condition of the goods shipped; and a question has been raised, how far the master and ship-owners are bound by these and other statements made therein.

The bill of lading is, in all cases, *prima facie* evidence of the statements therein contained; but as between the consignor or consignee and the ship-owners, it may be controlled by other evidence. Thus, a consignor brought an action against a carrier for the non-delivery of ten barrels of flour. To sustain his case, the consignor put in evidence the bill of lading, signed by the master, in which it was stated that one hundred barrels had been shipped; and he then proved, that only ninety barrels had been delivered by the master to the consignee. The ship-owners, in reply, offered evidence to prove, that the statement in the bill of lading as to the number of barrels shipped was incorrect, and that only ninety barrels had in fact been put on board the ship; and the court permitted them so to do.

So, where a consignee having received the bill of lading, and advanced money upon it, brought an action against the ship-owners for not delivering the full amount of goods stated in the bill of lading to have been shipped

it was held, that the ship-owners might prove, that they never in fact received so many goods as was stated in the bill of lading.

As, however, a bill of lading is usually negotiable, and as its negotiability must depend, in a great measure, upon the confidence which can be placed in the correctness of the statements therein contained, it would seem to be contrary to the policy of the law to permit, either the master or the ship-owners, to deny the truth of those statements, where the bill of lading has been assigned or indorsed over, and the assignee or indorsee has paid a valuable consideration for it. It would seem, therefore, that as against an indorsee for value, the ship-owner cannot dispute or deny what his agent, the master, by his signature has affirmed. The question is, however, still open to discussion.

Where the master had signed a bill of lading, in which it was stated that the freight had been paid by the shippers, though nothing in fact had been received, and the bill of lading was transferred by the consignee for a valuable consideration, it was held, that neither the master, nor the ship-owners could claim freight from the assignee of the bill of lading, but were bound, as against such assignee, by the statement in the bill of lading, that the freight had been paid.

It is obvious that the quality, and frequently also the quantity of the goods, must be unknown to the master, and, in such cases, the master ought to insert words in the bill of lading, denoting that the quality and quantity are only according to the representation of the merchant. And the master should be careful not to sign bills of lading until the goods are actually delivered to him, nor to permit the insertion of statements therein at variance with the facts. By so doing he may bind his owners, and become himself responsible to them and to other parties.

*Goods at the risk of the Purchaser while in the hands of the Carrier.*—Where goods are sent by a seller to a purchaser, the delivery of them to the carrier usually vests the property in the purchaser, absolutely, from the time of the delivery, and if any loss happens to the goods he, and not the seller must sustain it. If, therefore, the goods never reach the purchaser, but are lost while in

the hands of the carrier, the seller may, nevertheless, sue the purchaser for the price of the goods. And it makes no difference, in such case, that the seller is to pay the carrier for the carriage of the goods.

The seller is bound to follow the directions prescribed by the purchaser in the execution of an order for sending goods, since the latter sustains the risk of their conveyance, but in the absence of any specific directions upon that subject, the seller will be considered as duly performing his part of the contract, if he send them by the usual and accustomed mode of conveyance. Of course, if there is a special agreement that the goods shall be at the risk of the consignor until their delivery to the purchaser, that agreement will be binding.

*Stoppage in Transitu.*—Where goods have been shipped upon credit, and the consignee has become a bankrupt, or failed, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, allows him, in many cases, to countermand the delivery, and before or at their arrival at the place of destination, to cause them to be delivered to himself or to some other person, for his use. This is technically called, *stoppage in transitu*.

It is necessary, that the consignee should become *bankrupt*, or *insolvent*, for the consignor to exercise this right. If goods are sent by order of the consignee, on his account and at his risk, and the consignor draws bills of exchange on him for the price, and indorses and transmits the bills of lading, the consignor cannot take possession of the goods at the place of destination, and insist upon immediate payment as the condition of delivery, the consignee being willing to accept the bills, and not having failed in his circumstances.

The consignor may exercise this right of resuming possession of the goods in case of the bankruptcy or insolvency of the consignee, at any time before the goods have come into the actual or constructive possession of the consignee; unless the latter has made a valid assignment of the bill of lading for a valuable consideration, in which case the goods belong to such assignee, and the consignor cannot resume possession of them, even if the consignee has become insolvent.

# MARINE INSURANCE.

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## CHAPTER I.

**What cannot be Insured:** Wages of Seamen cannot be Insured.—Property usually Insured.—A person cannot Insure unless he has an Interest in the Property Insured.—Insurance upon Freight.—Other Insurable Interests.—When Consignee, or Factor, is bound to Insure.—Reinsurance.—Double Insurance.—Open and Valued Policies.

*What cannot be Insured.*—In time of war no valid Insurance can be effected upon the property of an *enemy*, although such property consists of goods manufactured in this country; neither can a citizen insure goods purchased by him in an enemy's country. Where, by the laws of the land, the traffic in any article is prohibited, no insurance can be effected on such article. The general rule is, that an insurance cannot be made in contravention of the laws of the land. And the insurer may take advantage of this objection, though he knew, at the time the insurance was effected, that the voyage was illegal.

*The Wages of Seamen cannot be Insured.* This rule, however, does not apply to wages already earned. Neither does it apply to the *captain's wages*, which may be insured, as also his commissions and privileges on board the vessel.

*The Property usually Insured.*—Insurances are most commonly made on goods and merchandize, freight, bottomry loans, profits and commissions. Every kind of property, in fact, may become the subject of insurance, unless, from motives of public policy, it has been prohibited by law.

*A Person cannot insure unless he has an Interest in the Property Insured.*—The law is well settled in this country, that if a man insures property in which he has no interest, the insurance is void, although it is expressed in the policy, "interest or no interest." These policies are called *wager policies*, and are regarded by law as a species of gambling, and are therefore void.

It is not necessary, however, that a person should be the owner of the whole, or a part of the property in order to enable him



to effect an insurance thereon; it is sufficient, if he is directly interested in its safety. A person, therefore, has an insurable interest in any property, when he is so circumstanced with respect to it, that its loss will be prejudicial to him.

*Insurance upon Freight.*—In order to recover on a freight policy, the insured must establish, either that goods were put on board the vessel, or that there was some contract under which the ship-owners, if the voyage had been consummated, would have been entitled to demand freight.

It is not always necessary, however, that the cargo should be actually on board, in order to enable a ship-owner, upon the loss of the vessel, to recover the insurance of the freight; it is sufficient, if it is so engaged as to give the ship-owner the right to have it.

But it is necessary that the insured should have either already received the goods on board, or sailed in the performance of a contract to carry goods. If, therefore, the owner of a ship, upon the eve of sending her to a foreign port for the purpose of obtaining freight, (no cargo, however, having been contracted for, but the ship being merely a seeking ship,) should procure an insurance on the freight expected to be earned, and the vessel should be lost on her passage out, and before any contract for freight had been entered into,—the owner could not recover such insurance.

And where, on a valued policy, made with reference to the whole amount of freight, a complete cargo is not in fact obtained, but the ship is only partly loaded when lost, the insured can only recover for the loss of the freight on the goods actually loaded on board the vessel.

*Other Insurable Interests.*—The profit expected to arise from a cargo of goods may be insured. Profits ought always to be insured in a *valued* policy, as they are then recoverable in case of a loss of the cargo, without the insured being compelled to show that any profits would have been made if the loss had not happened.

The advances of a consignee, an agent or factor, and the commissions of a master or supercargo, are all subjects of insurance. So, a merchant has an insurable interest in the expected commissions upon goods on shipboard, in the progress of the voyage, which are consigned to him for sale.

Both mortgagor and mortgagee may severally insure their respective interests. And though the property is mortgaged to its full value, yet the mortgagor has an insurable interest in the whole.

The lender upon bottomry and respondentia bonds has an insurable interest for the sum lent. The owner of the ship, in such case, has only an insurable interest in the surplus value above the sum lent.

It is sufficient if the insured has only a special property in the thing insured ; as a part owner of a vessel, who has chartered the remainder with a covenant to pay the value in case of a loss, may insure the whole vessel as his property. But a part owner insuring in his own name only, and not mentioning any other person as being interested, can recover only the value of his own interest. The insured usually causes the policy to be made for "himself and whom it may concern," in which case it is for the benefit of any person who has an interest in the property at the time of the insurance, and who *authorized* the insurance to be effected, or *adopted* it when made.

A person who charters a vessel and contracts with the owner to make insurance, has a sufficient insurable interest, as the effect of the contract is the same as an agreement to pay in case of loss. In such case, it is not necessary for the insured to state to the underwriters the particular nature of his interest, unless they question him respecting it. And where it is stipulated by a charter party, that in case the ship be lost during the voyage, the charterer shall pay the owner a sum of money which is estimated as the value of the ship, the owner has still an insurable interest.

*When Consignee, or Factor, is bound to Insure.*—It seems now to be well established, that consignees for sale, such as commission merchants, &c., may insure both for themselves and for their principal or consignor ; and they may insure the goods in their own name or in the name of their principal. If they insure in their own name, and the goods are lost, they may recover the full value of the goods, in which case the surplus, beyond their own interest, would belong to their principal.

Commission merchants are not, however, bound to insure, for the benefit of their principal, goods consigned to them for sale, without some express or implied directions to that effect.

The instances in which an order to insure must be obeyed are, first, where a merchant abroad has effects in the hands of his correspondent here, in which case he has a right to expect that he will obey an order to insure, because he is entitled to call his money out of the other's hands when and in what manner he pleases ; secondly, where the merchant abroad has no effects in the hands of his correspondent, yet, if the course of dealing between them be such, that the one has been used to send orders for insurance, and the other to comply with them, the former has a right to expect that his orders for insurance will still be obeyed, unless the latter give him notice to discontinue that course of dealing ; thirdly, if the merchant abroad send bills of lading to his correspondent here, he may ingraft on them an order to insure, as the implied condition on which the bills of lading shall be accepted, which the other must obey, if he accept them, for it is one entire transaction.

And if the usage of trade, or the habits of dealing between

them and their principals, require them to insure, they are bound to do so, even if they have received no express directions.

In the above cases the agent or consignee must exercise due diligence and skill in procuring insurance, and must cause the usual and ordinary risks to be inserted in the policy. If in any of these cases he neglects to make insurance, he is himself, by the custom of merchants, to be considered as the insurer, and liable as such in the event of a loss. And, if no available insurance is effected, it is the same as if none at all were made.

It has been held that, although no advantage can be taken of a gratuitous promise to procure insurance, in case of a total neglect to do so ; yet, that, if a voluntary agent actually proceeds to make insurance, but through his gross mismanagement the benefit of it is lost, he is answerable for the injury sustained.

*Of Reinsurance.*—It sometimes happens that the underwriters are desirous to be relieved from their responsibility, and they can do so by reinsuring the same risk. But the reinsurer is only responsible to the original insurer, and not to the original insured. The owner, therefore, can have no remedy against the reinsurer, in case of loss, even though the original insurer become insolvent.

Whatever reasonable and necessary expense the party reinsured has incurred in order to protect himself, and to entitle him to a recovery over against the reinsurers, he may, in addition to the sum he has been compelled to pay the insured, recover from the reinsurers ; especially if he had given the reinsurers notice that a suit has been commenced, and that they will be looked to for the costs and expenses, and do not object. An underwriter, in obtaining a policy of reinsurance is bound to communicate, in the same manner as the owner, such information as he possesses in reference to the premises insured, and also to the character of the party insured, and if he does not the policy will be void.

*Of Double Insurance.*—Double insurance is where the insured makes two insurances on the same risk, and the same interest. It differs from reinsurance in this, that it is made by the *insured*, with a view of receiving a double satisfaction in case of loss ; whereas a reinsurance is made by a former insurer, to protect himself from a risk, to which he was liable by the first insurance. A double insurance, though it be made with a view to a double satisfaction in case of loss, and is therefore in the nature of a wager, is not void. The two policies are considered as making but *one insurance*. They are good to the extent of the value of the effects put in risk ; but the insured will not be permitted to recover a double satisfaction. He may sue the underwriters on both the policies, but he can only recover the real amount of his loss, to which all the underwriters shall contribute in proportion to their several subscriptions. And, therefore, if he should content himself with suing on only one of the policies, the under

writers on that policy may recover a ratable contribution from the other underwriters. Different persons, however, may insure the same thing upon distinct interests, and each recover the full value of the thing insured. The insured may recover the amount insured on all the policies, if it does not exceed the real value of the property insured.

It is usual, in American policies, to insert a clause to the effect, that, in case any prior insurance has been effected on the same property, the underwriters to this policy will be liable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading to another. And also another clause to the effect, that, in case any subsequent insurance be effected upon this same property, the underwriters to this policy shall nevertheless be answerable, to the full extent of the sum by them insured, without right to claim contribution from such subsequent insurers. The effect of these clauses is to prevent contribution. And in case of a loss, whether total or partial, it must be borne by the underwriters in the order of time in which they stand; that is, the amount covered by the first policy must be exhausted, before a claim can be made on the underwriters to the second, and so on.

*Open and valued Policies.*—An *open Policy* of insurance is where the amount of the interest of the insured is not fixed by the policy; but is left to be ascertained by the insured, in case a loss shall happen.

A *Valued Policy* is where a value has been set upon the ship or goods insured, and this value inserted in the policy in the nature of liquidated damages, to save the necessity of proving it, in case of a total loss.

Where the insured has an actual interest in the property insured in a valued policy, the value shall not be questioned upon a total loss; unless the valuation was a mere cover for a wager policy, or unless it was so grossly enhanced as to raise a presumption of fraud.

If goods are fraudulently overvalued, in a policy of insurance, with intent to cheat the underwriters, the contract is entirely vitiated, and the insured cannot recover even for the value actually on board. Where, however, a valued policy is, *bona fide*, meant as an indemnity, the court will not inquire very minutely whether the valuation be very near the true interest of the insured.

In the case of a *partial* loss it was formerly held, that the valuation in the policy was to be disregarded, and the loss adjusted as in the case of partial loss under an open policy. But the better opinion now is, that the valuation of the property in the policy is to be considered as correct, in the adjustment of partial as well as total losses.

## CHAPTER II.

**Of Representation.—Of Concealment.—What will be deemed a Material Concealment.—What Things need Not be Disclosed.—Of Warranties ; Warranty of the Ship's Safety—Warranty that Ship shall Sail on a given Day—Of Seaworthiness of the Vessel—Commencement and Termination of the Risk : Upon the Ship—Upon Goods—Deviation from the Voyage—What will justify a Deviation from the Voyage : Stress of Weather—Want of necessary Repairs—Succoring Ships in Distress—Sickness of the Captain or Crew—Barratry.**

*Of Representation.*—A representation in insurance is a verbal or written statement, not inserted in the policy, of such facts or circumstances, relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risk. A representation is said to be *material*, when it communicates any fact or circumstance, the belief of which may be reasonably supposed to influence the judgment of the underwriters, in undertaking the risk, or calculating the premium. And whatever may be the form of expression used by the insured or his agent, in making a representation, if it have the effect of imposing upon, or misleading, the underwriter, it will be material, and fatal to the contract. There is a material difference between a representation and a warranty. A warranty being a condition upon which the contract is to take effect, is always a part of the written policy, and must appear on the face of it ; whereas a representation is only a matter of collateral information or intelligence, on the subject of the voyage insured, and makes no part of the policy. A warranty must be *strictly and literally* complied with ; but it is sufficient if a representation be true in *substance*.

The effect of a misrepresentation in a policy depends on its *materiality to the risk*. If it had no influence, or ought to have had none, of course it could not have been material. A misrepresentation, in a material point, avoids the policy ; and it makes no difference ; in such case, whether the misrepresentation be made with a fraudulent design, or by mistake, or negligence, as the insurer is thereby led into an error, and induced to take the risk at a smaller premium than he would, had he known the real state of the facts, in which case, perhaps, he would not have assumed the risk at any rate of premium. And such misrepresentation so completely vitiates the policy, that the insured cannot recover upon it, even for a loss arising from a cause unconnected with the facts, or circumstance misrepresented. Whether a misrepresentation be *material* or not, is a fact for the jury to decide. But no representation of a person's *opinion, intention, expectation, or belief*, unless fraudulently made, will avoid a policy.

In such case, the party does not know the real state of the facts, he merely gives his opinion.

*Of Concealment.*—Concealment consists in the suppression of any fact or circumstance, *material* to the risk; and the effect of it is to avoid the policy; for as the facts upon which the risk must be estimated, generally lie within the knowledge of the insured, or of his agents, the underwriter must, in most cases, rely on him for all necessary information, to enable him to decide upon what terms he will take upon himself the proposed risk; and he computes the premium, and enters into the contract, in the confidence that the insured, being fully informed of all the circumstances relating to the intended voyage, has dealt fairly with him, and has kept back nothing which it might be material for him to know. The concealment, however, to affect the policy, must be *material*. But the effect of a concealment is the same, where it is the result of accident, negligence, inadvertence, or mistake, as if it were intentional and fraudulent, in either case it will be equally fatal to the contract of insurance.

It therefore behoves the insured, from motives of common prudence, to inform himself of every fact and circumstance, which may throw the smallest light on the nature and perils of the proposed adventure: and he is bound by principles of moral honesty, to disclose to the insurer all such circumstances, with the most unreserved candor and frankness. The *underwriter*, as well as the *insured*, is bound to disclose all circumstances within his knowledge, in any degree affecting the risk. If, therefore, it appear that, at the time he underwrote the policy, he knew that the ship had arrived safe, the contract will be void as to him, and an action will lie against him, to recover back the premium.

*What will be deemed a Material Concealment.*—Every fact and circumstance, which can influence the mind of a prudent and intelligent insurer, in determining whether he will underwrite the policy at all, and at what premium he will underwrite it, is material. And a concealment so vitiates a policy, that the insured will have no remedy, even for a loss arising from a cause unconnected with the fact or circumstance concealed. So, it will make no difference, that the insured considered the facts concealed, as *immaterial*; if they appear to be *material*, and the jury so decide, the policy will be avoided. If however, such material fact was known to the insurer, the mere silence of the insured respecting it will not avoid the policy.

The necessity of disclosing facts material to the risk, is not limited to the owner of the property; but any person acting by the orders of the insured, and who is anywise instrumental in procuring the insurance, is bound to disclose all he knows, to the underwriter, before the policy is effected.

The *time* of a ship's sailing is not, in general, a circumstance necessary to be communicated to the underwriters, except in the case of a missing ship. Where, however, a vessel has been

a long time at sea, it is a fraudulent concealment, if that circumstance be not communicated to the underwriter. And if it appear that the insured did not intend to insure until he believed her to be missing, and then not until another ship, which had sailed at the same time, had arrived in safety, the concealment of this fact is fatal and avoids the policy. So, if a ship be advertised to be in danger, and the insured effects a policy upon goods on board "*ship or ships*," knowing that the ship in danger is one of them, without stating the *ship's name*, this is a concealment which avoids the policy. And, indeed, the question might arise, whether, if the owner of the goods effects a policy "*on the ship or ships*," knowing their names, but not communicating them, this would not be tantamount to a representation that he does not know by what ships the goods will come, and thus avoid the policy. The safer course, at least, in such case, would be to communicate their names, if known, to the underwriter. If a ship is to be employed in a service of peculiar danger, this should be stated to the insurers. So, if the insured receives a letter containing facts, which, if communicated to the underwriter, would lead to inquiry, and produce important information, it ought to be shown by the insured to the underwriter. If, however, the owner of a ship receives a letter from the captain, written on her arrival in a foreign port, giving such an account of her, as to render it probable that she must remain there, for the purpose of being repaired, beyond the time that would be necessary for her to take in her cargo, this letter need not be communicated to the underwriters in effecting a policy of insurance upon her, at and from the foreign port, unless information on the subject be particularly called for. Probably the reason of this is that every ship, upon arriving in port, has to undergo more or less repairs, and this is known to the underwriters.

Many more cases might be cited, but no difficulty will ever arise, if the insured will keep in view the principle of the law. The underwriter on a policy of insurance enters into the contract and computes the premium, in full confidence that the insured, being fully informed of all circumstances relating to the intended voyage, has dealt fairly with him, and has kept back nothing which it might be material for him to know. Every fact and circumstance, therefore, which can possibly influence the mind of the insurer in determining whether he will underwrite the policy, or at what premium, is material to be disclosed, and a concealment thereof will vitiate the policy. Even doubtful rumors, therefore, respecting the safety of the ship, ought to be disclosed. And such is the abhorrence in which the law holds fraud, that if the owner hears that the ship is in danger, and does not communicate that fact to the underwriter in effecting a policy, the policy will be void, notwithstanding it afterward appears that the rumor of the ship being in danger was false.

*What Things need Not be Disclosed.*—The insured need not disclose what the underwriter knows, or ought to know; such as, the difficulties of the voyage, the variation of the seasons, the situation and character of the various ports, the usage of trade, &c. Neither is it necessary to state general topics of speculation. It is sufficient to communicate *facts*, without stating the apprehensions produced by them. It is also a rule, that it is unnecessary to make any communication or disclosure of that which the insured undertakes, by a warranty, express, or implied. Although there are, therefore, different degrees of seaworthiness, which, if known, may affect the rate of premium, yet it is not necessary that there should be any representation as to the state or condition of the ship, previously to the effecting of the policy; because, in every contract of insurance there is an implied warranty that the ship is seaworthy. So, the insured of goods is not bound to make any representation as to the state of them; though, if a loss happen from the bad condition of them, he cannot recover for that which he has himself occasioned. So, when an insurance is to be made on a homeward voyage, it seems to be sufficient to make a full and true representation of the state the ship was in, at the time the last intelligence left her, without detailing all her previous proceedings. The general rule is, that those things only need be disclosed, which the one privately knows and the other has no reason to suspect, and which vary the risk.

*Of Warranties.*—Warranties are of two kinds, express and implied. An express warranty must be reduced into writing, and form a part of the policy itself; an implied warranty is that which results, by mere operation of law, from the relative character and situation of the insured and underwriters. A warranty in a policy of insurance is regarded as a condition; that is, a stipulation, upon the strict compliance or non-compliance with which the validity of the policy depends. No *substantial* compliance with the warranty, or performance of any equivalent act, will avail the insured, or render the underwriters liable, if the *express terms* of the contract be infringed. It is immaterial whether the purpose intended by the warranty has been answered or not; whether the loss was attributable to a violation of the warranty, or to any other cause; or whether the breach of the stipulation was occasioned by fraud, or negligence of the insured, or happened entirely without their fault; if the terms of the warranty be broken, the condition of the contract is violated, and the underwriters are consequently discharged. And there is a material distinction, in this respect, between a warranty and a representation; though a warranty must be *strictly* complied with, it is sufficient if a representation be fairly and substantially true.

*Warranty of the Ship's Safety.*—When a warranty is inserted



that the ship or goods were *safe* on a particular day, the warranty is satisfied if they were in safety *at any time* on that day; and although the policy be subscribed on the same day, and a loss has taken place before the signing, the underwriters will still be liable.

*Warranty that Ship shall Sail on a given Day.*—The warranty that a ship shall sail on a given day must be strictly performed. Thus, if a ship, warranted to sail on or before a particular day, be prevented from sailing on that day by an embargo, the warranty is not complied with. So, a warranty to sail on or before a particular day is not complied with, if the ship do not completely unmoor on that day, though she then has her cargo and passengers on board, and is ready to sail, and is only prevented from doing so by stress of weather. So, if there be a warranty to sail after a specific day, it is broken, and the policy avoided, by sailing before the day.

The general rule is, that if a ship quits her moorings, and removes, though only to a short distance, being perfectly ready to proceed upon her voyage, and is by some subsequent occurrence detained, that is, nevertheless, a sailing. It is necessary, however, that she should set sail by the appointed time, in a state of preparation and equipment for the voyage; and the warranty is not complied with by the ship's raising her anchor, getting under sail and moving onward, unless these acts are done *as the commencement of the voyage*, and everything is then ready for the prosecution. And if the ship should leave the harbor on the day warranted, without having a sufficient crew on board, although the remainder of the crew are engaged and ready to sail, it is not a sailing within the warranty. And where a ship has left the port, in an *incomplete* state of equipment, intending to stop at some other place to obtain her clearance or necessary papers, to take in water or provisions, to complete her cargo, or any other preliminary purpose; she cannot be considered as having sailed within the warranty.

A warranty "*to sail*," therefore, is complied with, if the ship, being *fully equipped* for the voyage, *break ground*, and *get under weigh* by the appointed time. But in practice, there is a difference of construction between the words "*warranted to sail*," and the words "*warranted to depart*," on or before a certain day. A warranty *to depart* requires that the vessel be completely out of the port from which the voyage is to commence, by the time specified. Therefore, where a ship, being insured at and from Memel, and "*warranted to depart* on or before the 15th of September," obtained her clearances, and set sail on her voyage before that day, but was detained within the harbor, by contrary winds, till afterwards, the warranty was not complied with. If the ship had been warranted *to sail* on or before the 15th of September, she would have satisfied the warranty by

the course adopted ; but she had not satisfied the warranty "*to depart*," which required that she should *leave* the port of Memel on or before the day mentioned in the warranty.

*Of the Seaworthiness of the Vessel.*—It is an implied warranty in the case of a policy on ship, goods, or freight, that the ship shall be seaworthy, when she sails on the voyage insured ; that is, that she be tight, staunch, and strong, properly manned, provided with all necessary stores, and in all respects fit for the intended voyage. A ship to be seaworthy, must not only be tight, staunch, and strong, as respects her *hull* ; but she must likewise be furnished with all the necessary stores, and with such sails, rigging and tackling, as will enable her, on the one hand, to encounter ordinary perils of the seas, and, on the other, to prosecute her voyage with reasonable expedition.

There are different degrees of seaworthiness, which, if known, may affect the rate of premium. But provided the ship be in a condition to encounter the ordinary perils of the intended voyage, it is necessary to communicate, unsought, a circumstance which, if disclosed, might have the effect of enhancing the premium.

It is not necessary that the ship should, in all cases, be seaworthy from the moment the policy attaches, and the risk commences, but it is sufficient if the ship, at the time the risk commences, be in such a state *as her situation then requires*. If this were not the case, and the owner could never recover on a policy of insurance, unless the ship were seaworthy, at the time of her loss, it must be evident, that an insurance could seldom be effected so as to attach to, and the risk commence running on the ship, while lying in port ; for seaworthiness includes an adequate crew and sufficient provisions, and a proper complement of these is seldom taken on board, till the ship is on the eve of sailing. The implied warranty of seaworthiness is sufficiently answered, however, if the ship be seaworthy *at the time of sailing*. And by these words "*at and from*," in a policy, the risk attaches while the vessel is in port, though she be not seaworthy, and though, at the time, she be in the dock, undergoing the requisite repairs to render her seaworthy and capable of performing the intended voyage. Thus, the owner of a ship brought an action to recover back the premium paid for a policy of insurance, on the ground, that, as the ship was unseaworthy when she sailed from port, the policy never attached, and consequently the insurance company never incurred any risk under it. Upon examining the policy, it appeared, that the ship was insured "*at and from*" the specified port, and the court thereupon decided, that by the word "*at*" the policy attached while the vessel was in port, notwithstanding she was then unseaworthy ; and that having once attached, and the risk commenced, the premium could not be recovered back, though the policy was subsequently rendered void by the ship's sailing in an unseaworthy condition.

If it be clearly ascertained that the ship, at the time of her departure, was not in a condition to perform the voyage insured, neither the innocence nor ignorance of the insured, nor any precaution he may have taken to make her seaworthy, will avail him against the breach of his implied warranty. Thus, where the owner of a ship, previous to her sailing, caused her to be completely repaired, and it afterwards appeared that she was not seaworthy by reason of a *latent* defect, which could not have been discovered by the most careful examination, it was held that the policy was void.

So, where an insurance is made on her homeward passage, the warranty that she was seaworthy at the time of her departure is as strongly implied in the contract, as in the case of an insurance effected on her outward passage. And though no fraud be imputable to the insured; though he supposed, or believed, that the ship was in all respects seaworthy; though no blame be imputable to the master, or any other agent of the insured; and though the underwriters were as well acquainted with the state and condition of the ship as the owner; yet, if in fact she was not seaworthy at the time of her sailing, the policy of insurance will be void.

There are, however, different degrees of seaworthiness. Thus, a ship may be competent to the performance of one voyage, and yet not of another. So, she may be repaired and equipped in a manner suitable for one season, though not for another. And for the same voyage, to be prosecuted at the same season of the year, different persons may entertain different opinions as to what would constitute seaworthiness. So, the merchants of one country or port, may furnish their ships in a particular manner for a certain voyage, considering it requisite to the safety of their vessels, while the merchants of another country or port would not so consider it, and, consequently, would not so furnish them. Whether or not a vessel were seaworthy at the time she sailed is, therefore, a question for the jury to decide; and in forming an opinion they should take into consideration the nature of the voyage, the season of the year, and the custom of the port to which she belongs, for it is to be presumed that the underwriters had them in view, when they insured the vessel.

Of course, in deciding the question of seaworthiness, the situation of the ship, at the time of her loss, must be considered. Thus, seaworthiness in port, or for temporary purposes, such as mere change of position in the harbor, or proceeding out of port, or lying in the offing, may be one thing; and seaworthiness for the whole voyage quite another. So, what would be a competent crew for the voyage; at what time such crew should be on board; what is proper pilot ground; what is the course and usage of trade in relation to the master and crew being on board, when the ship breaks ground for the voyage, are all questions of fact for the jury, to be decided according to the established usages and customs in such cases, as testified to by experienced men.

But though the vessel be unseaworthy, at the time of sailing, yet if the defect be remedied, with the knowledge and consent of the underwriters, and a loss then happen, not occasioned by such defect, the underwriters are not discharged. But if she sail without a sufficient crew, and go out of her course to complete it, without the consent of the underwriters, they are not liable for a subsequent loss.

A ship to be seaworthy, must have on board a master, officers, and crew competent in point of skill, and sufficient in number to navigate such a vessel upon the voyage she is destined. It is not sufficient that the master is capable of navigating her; there must also be on board a mate having sufficient theoretic and practical knowledge of navigation and seamanship to take command in case of necessity. A vessel sailing without such a mate would not, therefore, be deemed seaworthy, at least if she were on a long voyage. And where the master is lost, or becomes incompetent, the mate is not bound to procure a suitable person for master, upon the ship's arrival in a port where such person can be obtained, but may take charge of her himself during the remainder of the voyage, and the insurers will not be discharged thereby.

If the vessel, crew, and equipments be originally sufficient, the insured is not responsible for the subsequent deficiency occasioned by any neglect or misconduct of the master or crew. The owner does not warrant the fidelity of his agents, but merely their capacity and ability. Thus, in case of collision the underwriters are liable, not only where it is the result of accident, but where it has been caused by the fault or negligence of the master and crew. And in such cases, the underwriters are liable, not only for the actual damage done the ship insured, but also for the amount paid the owners of the vessel run into, by way of compromise for the damage sustained by the latter vessel. So, where it appeared, that the captain, during the voyage out, became partially insane and otherwise incompetent to manage the ship; that the mate neither obtained a person as master, at the next port, nor took charge of the vessel himself, but suffered the captain to continue in authority, and that the ship was lost by reason of his incompetency; the underwriters refused to pay the insurance, on the grounds, first, that it was the duty of the mate, upon the arrival of the ship in port, to procure a suitable captain; and, second, that if this were not so, yet he ought to have taken charge of the vessel himself, and his not having done so was a neglect of duty on his part, which freed the insurers from all liability. It was held, that the mate was not bound to procure another master, as the mate of a vessel should himself be competent to take charge of her, in case of the death or incompetency of the captain; and that, in this case, if from the mate's ignorance of the true state of the captain's situation, or from his reluctance to take the command from him, or from his *neglect of duty*, the vessel was lost, still the underwriters were liable.

If a master should set sail on a voyage with a crew in such a state of intoxication as to render them unfit, at the time, for the proper performance of their duty, and the ship should be damaged or lost thereby, it is extremely doubtful whether the owner could recover her insurance of the underwriters, as the ship could scarcely be deemed seaworthy.

It is sufficient if the ship is seaworthy at her departure, and if she become unseaworthy afterwards and is lost thereby, the insurers will be liable. It must not be understood by this, however, that if the vessel is seaworthy when she sails, the owner is thereby freed from all further liability to keep her in a seaworthy condition, and though she is lost in consequence of his negligence and want of care in this respect, the underwriters are, nevertheless, liable. The owner (and by owner, we include of course the master who is the agent of the owner for the purpose of keeping her properly repaired and equipped during the voyage), is bound to keep her seaworthy during the whole voyage, if he can do so by the exercise of reasonable care and diligence. If the ship sustain an injury in her hull, sails or rigging, or become otherwise disabled, the injury must be repaired as soon as it can be conveniently done. If some of the crew are lost by death, desertion, or otherwise, their places must be supplied as soon as practicable. And if a ship become unseaworthy from any cause, and reaches a port where she can procure supplies or repairs, as the case may be, and leaves the port without obtaining them, and she is afterwards lost by reason of such unseaworthiness, the insurers are not liable. If, however, the ship should become unseaworthy, and the master should not know of it; or, if she receives a blow, and he judges from her subsequent conduct and sailing, that she has suffered no injury thereby, and did not, therefore, have her examined and repaired at the next port he reached, and she should be lost, the underwriters would be liable; though it should appear, that the loss was occasioned by an injury to the hull, which if properly examined while in port, might have been discovered and repaired. So, if the ship become unseaworthy, but is in a quarter of the globe where suitable repairs cannot be made, and she is lost thereby, the underwriters are liable. So, if the ship become unseaworthy, and the owner or master does not exercise reasonable care and diligence to have her repaired, but her loss is not occasioned by her unseaworthiness, but is clearly attributable to some other cause, as to fire, &c., the underwriters are liable. In the case, therefore, where a ship is unseaworthy at her departure, and is lost, the owner cannot recover her insurance, whether he knew of the defect or not, and whether the loss was occasioned by such defect or not. In the case, where she is seaworthy when she sails, but subsequently becomes unseaworthy and is lost, the owner can recover her insurance, unless it appears, that he (or

the master) *knowing* her to be unseaworthy, did not exercise reasonable care and diligence to have her repaired, and that she was lost in consequence of her unseaworthiness.

*Commencement and Termination of the Risk,--Upon the Ship.*—The commencement and termination of the risk must depend upon the words of the policy. If an insurance be “*from*” a place, the risk does not commence till her departure from that place, or, in nautical language, till the ship breaks ground. A ship is said to break ground when she weighs her anchor and quits her moorings, in complete readiness for sea, and it is the actual and real intention of the master to proceed on the voyage. And if she is afterwards stopped by head winds and comes to anchor, still intending to proceed as soon as wind and weather will permit, and a loss happens, the underwriters are liable. Where a vessel was insured for one year from the date of the policy, and if the ship should be *at sea* at the expiration of the year, then the policy was to run until her arrival at her destined port; it appeared that a few weeks previous to the expiration of the year, the ship being then in port, and having taken on board her cargo, left her moorings with the intention of proceeding on her voyage, and that she had sailed but a few miles when she was stopped by head winds, obliged to come to anchor, and was detained until a few days after the expiration of the year, when she again set sail and was lost during the voyage. The underwriters refused to pay the insurance on the ground that she was in port at the expiration of the year, but they were compelled to, the court deciding that the vessel having once set sail, with the intention of proceeding on her voyage, she must be considered “*at sea*.”

If the insurance be “*at and from*” a place, the risk commences from the time of subscribing the policy, if the ship is *at home*. When, however, a ship, which is expected to arrive at a certain place abroad, is insured “*at and from*” that place, or “*from her arrival*” there the risk begins from the first moment of her *arrival at the place* specified; and the words “*first arrival*” are implied and always understood in policies so worded. It is to be understood, however, that the ship must once have been *at* the place in good safety; otherwise the policy does not attach. Therefore, if she arrive there in such a state as to be unfit to lie in safety, the risk does not attach. Thus, on a policy “*at and from St. Michaels*,” it appeared, that the ship arrived there in a very disabled state, and after lying at anchor above twenty-four hours, in great danger from a storm, was blown out to sea and wrecked; it was held, that the policy on the homeward voyage never attached.

The risk on the ship usually terminates after the ship has been moored twenty four hours in safety; but she must have been during that time *in good safety*, in the fullest sense of those

words ; for till then, the voyage is not at an end. If, therefore, the ship be obliged to perform quarantine, this does not end the voyage ; and, if, before the twenty-four hours are expired, she be ordered to the proper place for that purpose, the risk continues, though she do not leave her moorings till after the twenty-four hours are expired. So, if before the expiration of the twenty-four hours, she should be blown to sea by a storm, the risk would continue. If, however, the ship receives her death wound before her arrival, but succeeds in reaching the port of destination, and remains moored twenty-four hours in safety, the underwriters are discharged. A contrary doctrine, however, prevails in Pennsylvania. And it is held in that state, that where a vessel in the course of the voyage, has suffered damage to the amount of fifty per cent., the insured is entitled to recover for a total loss, notwithstanding she has performed her voyage, and been moored twenty-four hours in safety at the port of destination.

If a ship be insured from the West Indies to a port of discharge in the United States, and sails thence for Savannah ; but after making some inquiries at that port respecting the state of the markets, and making some repairs, and stopping only a sufficient time for those purposes, but without discharging any part of her cargo, she sails for Boston, it was held, that the risk continued till her arrival at Boston, as Boston was the port of discharge, within the policy. Where however, the risk is to run to a country generally, as an insurance on a ship to Jamaica, it is determined by the ship's mooring twenty-four hours in any port there, and does not continue till she comes to the last port of delivery.

In general, the risk on the rigging, tackle, furniture, and provisions of the ship insured, continues no longer than they are attached to, or remain on board, the ship. But where it is necessary to put them on shore during a repair, and this is the usual practice, the risk on them continues ; and if they be lost or damaged, by any of the perils mentioned in the policy, the insured is liable.

*Upon Goods.* — Under the usual form of our policies, the risk does not usually commence until the loading of the goods on board the vessel. And it may be laid down as a general rule, that the risk on goods continues no longer than they are actually on board the ship mentioned in the policy, or in boats for the purpose of being landed, and that if they be removed from on board and landed, or put on board another ship, without the consent of the insurers, the contract is at an end, and the insurers are discharged from all subsequent responsibility. But to this rule there are certain exceptions, founded in necessity. As, where the ship is disabled in the course of the voyage, so as to be incapable of proceeding to her port of destination, and

it becomes necessary to shift the goods insured on board another vessel, in order to be conveyed thither. In this case, the risk continues, and the insurers are liable for any loss, which may happen to the goods on board the new ship. So, if it be agreed that the goods shall be removed into another ship, at a particular place in the voyage, and no ship being there, they are put on board of a store-ship, and lost on board of her, the insurer is answerable. Policies ought to be construed according to the usage of trade. If, therefore, it is customary to unload by means of lighters, the goods are protected, while on board such lighters by the policy. The policy, however, affords protection in the port of delivery, only till the goods can be conveniently landed.

*Deviation from the Voyage.* — By deviation is here meant a voluntary departure, without necessity or reasonable cause, from the regular and usual course of the voyage insured. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility.

The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters *from the time of the deviation*. If, therefore, a ship, or goods, after the voyage has commenced, receive damage, then the ship deviate, and afterwards a loss happen; then, in such case, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained *previously* to the deviation. But though he is thus discharged from subsequent responsibility, he is entitled to retain the whole premium.

It makes no difference that the vessel afterwards resumes her proper course, the contract having once been broken by the deviation, cannot be renewed without the consent of both parties. So it is immaterial whether the time or distance of a deviation be long or short; whether it be for an hour or a month, for one mile, or one hundred — the consequence is the same. If it is voluntary, and without necessity, it puts an end to the responsibility of the insurer.

A deviation has been stated to be, a voluntary departure, without necessity, from the usual course of the voyage. By the course of the voyage, is not meant the shortest course the ship can take from her port of departure to her port of destination; but the usual and customary track, if such there be, which long usage has proved to be the safest and most convenient. And if it is customary for vessels in the course of the voyage to stop at certain places, though out of the direct line, it is not a deviation. It must be shown, however, that the custom for vessels to stop at such places, has been long and uniform; and evidence of a few instances is not sufficient to establish such



a custom. Where, therefore, it cannot be proved to have been the regular and uniform practice, it will be considered a deviation, and the insurers will be discharged.

If there are several ports of discharge mentioned in the policy, the ship must not invert the order of them, but must go to them in the order in which they are named, unless some usage, or particular necessity, intervene to vary the general rule. And if the ship's ports of discharge be only mentioned generally, and not specifically named in the policy, the ship must go to them in the *geographical order* in which they occur; and taking them out of the order, unless this be warranted by usage, will be a deviation. The ship may, however, sail for *any one* of the places, as the voyage insured means a voyage to all or *any* of the places named, subject to this restriction, that if the ship should go to more than one of the places, she must visit them in the order in which they stand in the policy. If a ship is compelled by *necessity* to alter the order of the places, it will be no deviation.

Where a policy contains a clause making it lawful for the ship "to touch, stay, trade, &c., at any ports or places whatsoever, without prejudice to this insurance," it is always interpreted as subordinate to the voyage insured, which is the principal object of the contract. It must also be confined to some purpose within the scope of the adventure, and "ports and places" mean those *in the usual course of the voyage*. So, on a policy from and to New York, with leave to call at any of the windward and leeward islands, and load or unload there, it was held that the going to two of them, for a purpose *unconnected* with the voyage, was a deviation, notwithstanding the leave. It is not an implied condition in a policy on ship and freight, that the ship shall not trade in the course of the voyage, if that may be done without *deviation or delay, or otherwise increasing the risk* of the insurers; and, therefore, where a ship was compelled to enter a port to obtain a necessary stock of provisions, which she could not obtain in her usual course, and during her justifiable stay in the port, so entered for that purpose, she took on board bullion there in freight, which the jury found did not occasion any delay in the voyage, it was held not to avoid the policy. So, an idle waste of time, after a vessel has completed the purposes for which she entered a port, is a deviation which discharges the underwriters, for a ship must proceed on her voyage, not only by the usual course, but also with all reasonable expedition.

But an *intention* to deviate, however deliberately formed, is not a deviation. Thus, if the ship sail from the port mentioned in the policy, with an intention to call at a port not mentioned in the policy, and even instructions for that purpose are given to the captain, before the ship's departure, it is not such a

change of the voyage as to prevent the policy from attaching, but is merely a case of deviation, *if the intention be carried into execution*, or be persisted in after the vessel has arrived at the dividing point, that is, where she deviates from the usual course of the voyage insured in order to call at such port. If in such case she be lost before she arrives at the dividing point, the underwriters are liable. And where a vessel sailed with the *intention* to touch at a port not mentioned in the policy, and the vessel did actually go there, the owner was allowed to show that the master was compelled to put in there by necessity, and such being the case, it was held to be no deviation.

If there are several tracks to the place of destination, of which the captain ought to be at liberty to make his election, but the insured prescribed one to him, and the ship having taken that course, is lost, the insurer is discharged.

*What will justify a Deviation from the Voyage.* — If a deviation can be justified by necessity, it will not avoid the policy. But the necessity, to justify a deviation, must be real, inevitable, and imperious. The duration and extent of the deviation, also, must be warranted by the degree of the necessity; the ship must pursue the voyage of necessity, so as to get to her port of destination in the shortest and most expeditious manner; and any wilful departure from the direct course of this new voyage, or any unnecessary delay therein, will be a new deviation that will discharge the underwriters, in the like manner as if it had been a wilful departure from the original voyage.

*Stress of Weather.* — If a ship, in a storm, be driven to seek refuge in a port out of the usual course of the voyage, this shall not be deemed a deviation that will determine the contract.

*The Want of necessary Repairs.* — The want of necessary repairs is another excuse for departing from the direct course of the voyage. If the ship from stress of weather, or any other cause, be reduced to such a state that she cannot safely proceed on her voyage without repairs, the captain will be justified in carrying her to some port, the least out of his course, where such repairs can be had. But if the ship deviate for the purpose of repairs, this, like every other voyage of necessity, must be pursued in the most expeditious manner; and if it appear to have been undertaken for any other object than repair, it will not justify the deviation; or if there be any unnecessary delay in getting the repairs done, this will be equivalent to a new deviation.

*Succoring Ships in Distress.* — A deviation for the purpose of succoring a ship in distress ought not, it would seem, on grounds of policy, as well as from motives of humanity, to avoid the policy of insurance. A delay, or deviation at sea, however, merely for the purpose of saving a ship, or her cargo, is such a deviation as to discharge the underwriters. If, however, the

deviation be for the purpose of saving the lives of the shipwrecked mariners, it would not avoid the policy. But after this object is effected, if the stoppage be continued, or the risk increased by adding to the cargo, diminishing the crew, or by other means for the purpose of saving the property found, the underwriters will, probably, be discharged.

*Sickness of the Captain or Crew.* — If by sickness, or any other cause, so many of the officers or ship's company are disabled from performing their duty, as to render it impossible, or highly perilous, to proceed on the voyage, the ship may put into the nearest port where medical assistance, or other hands, can be procured; and the deviation in such case will be justified by the necessity. But, to make out such a justification, it must clearly appear that this necessity arose without any default of the master or owners; and that suitable medicines and instruments were on board.

Generally, putting into port from stress of weather — to stop a leak — obtain provisions, &c., — going out of the track to avoid an enemy — for convoy or other purposes — for the safety of the ship or goods, being beneficial to the insurers, are justifiable.

*Barratry.* — Barratry is any fraudulent or other unlawful act committed by the master or mariners of a ship, without consent of the owner, and tending to his injury; — as by running away with the ship, wilfully carrying her out of the course of the voyage prescribed by the owners, sinking, or deserting her, embezzling the cargo, smuggling, or any other offence whereby the ship or cargo may be subjected to arrest, detention, loss, or forfeiture. Where a loss is occasioned by the barratrous acts of the master or mariners, the insurers are not liable, unless barratry is specially insured against in the policy. It is usual for the underwriters to insure barratry, and the insured should examine the policy to see that it contains a clause to that effect. If, however, the captain be the insured, no agreement on the part of the insurers can make them liable for barratry committed by himself; but they may be liable in such case for the barratry of the sailors in which he has no part. It is the duty of the owner to prevent, as far as he may, the misconduct of the master; and if the former appear to have acted with gross negligence, the underwriter is not liable.

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## CHAPTER III.

**General Average; Contribution in Cases where the same Person owns the Ship, Cargo, and Freight.—Who must Claim the Contribution—Contributory Value of the Ship, Cargo, and Freight.—The Place of Adjustment.—Of Total Losses and Abandonment.—When an Abandonment is Allowed of the Ship, Goods, and Freight.—Within what time Abandonment must be made.—Notice of Abandonment.—Of Partial Losses and Adjustment of the Ship, Goods, and Freight.—Return of Premium.**

*General Average.*—General average signifies the contribution to which the owners of the ship, goods, and freight, become liable one to another, on the sacrifice of a part of the ship, or cargo, for the preservation of the whole, in a case of general danger. The principles of general average ought to be examined in a work on insurance, because the underwriters are liable to pay the insured the proportion of the contribution, assessed upon the amount insured, in cases where the loss is occasioned by some peril insured against.

To constitute a claim to general average, there must be a voluntary and premeditated sacrifice of part for the preservation of the whole; in which case, all who are benefited by the sacrifice must contribute to the loss, in proportion to their several interests. The ordinary instances of this species of sacrifice are the throwing overboard of part of the cargo, or the ship's stores, the cutting away of the ship's masts, cables, boats or rigging, or other designed and voluntary sacrifice. The sacrifice must be *voluntary*, and made on an occasion of imminent danger. It must not be the result of a panic terror, but an act of prudence to avoid a real danger; it is not indeed necessary, for prudence generally will not permit, that the master, should wait till the very last extremity. The most usual foundation of general average is the case of *jettison*, when goods are thrown overboard to lighten the ship, which may be necessary in a case of storm, or when the vessel is chased by an enemy, or has accidentally run aground, &c. Where jettison is made for the purpose of preventing an approaching danger, and there is time to deliberate whether the jettison ought to be made, in what manner, and of what things, it is best for the captain to take the advice of the other officers and perhaps the crew. Of course, this cannot be done, where the danger is imminent, and requiring immediate action. If the owner of the goods be present and refuse his assent, the master may proceed, in so extreme a case, without his permission. In selecting the articles which should be thrown overboard, those which are the least necessary, the heaviest, and the least valuable, seem to be properly taken first. But this must be regulated by the prudent choice of the captain.

according to the necessity of the case. The damage done to a ship and cargo in effecting a jettison, in consequence of the necessity of cutting holes in the ship, or opening the hatches to effect a jettison, is said, also, like the jettison, itself to form a subject of average contribution. And not only jettison, but other sacrifices analogous to it, and extraordinary expenses incurred for the general preservation of the ship and cargo, will also lay a foundation for an average claim. Thus, the loss of a cable, cut away by the master in a storm, as the ship was entering a harbor in order to fasten her to the pier and prevent collision with another vessel, was held to be a proper subject of general average. So, when the captain, in a case of collision, was obliged to cut away part of the rigging, and the ship being thereby unable to prosecute the voyage, or even keep at sea, he returned to port to repair the damage sustained; here the freighters were held liable to contribute to the expense of the repairs, and of unloading the ship for the purpose of making them, so far as they were absolutely *necessary* to enable the ship to prosecute the voyage, but no further, as any repairs beyond those *necessary* for the prosecution of the voyage must be for the benefit of the ship-owner, and a charge upon him only. Sails, ropes, and other materials cut up and used at sea for the purpose of stopping a leak occasioned by a storm, or to rig jury masts on a like occasion, or for other extraordinary purposes of a similar nature, which the general safety may require, are considered as proper subjects of general average. In the case of a sale of part of the goods, by the master, in a foreign port, into which the ship was obliged to be brought in distress, for the purpose of defraying the expense of the repair, this appears to be a fit subject of general average; the sale being made in a case of necessity, and the master having no other means of raising money, — although the underwriters on goods are not liable for goods so sold. Among the expenses which, on the occasion of an extraordinary sacrifice, may occur, as raising a claim to average contribution, or pilotage, which may become due on putting into a port of distress; the expense of unloading the cargo, either for the purpose of repairing the ship or of floating her when she accidentally gets aground; the expense of getting the ship off the ground; the hire of extra hands to pump the ship, after having sprung a leak in a storm; the extra charges incurred on putting into a foreign port in distress; the sum awarded or agreed to be paid to ships, boats, pilots, &c., for bringing a ship, when at sea in distress, into port; or for unloading the ship and getting her off the ground when forced on shore. So, if goods be put on board a lighter, to enable the ship to sail over a bar into a harbor, and the lighter perish, the owners of the ship and the remaining cargo are to contribute. But if the ship be lost, and the lighter saved, the owners of the goods preserved are not to contribute.

On the other hand, no claim to average contribution can arise, first, where the goods thrown over as a jettison, are goods stowed on deck; and as a general rule underwriters are *not* answerable for property stowed on deck. It would seem, however, that the owner of goods stowed on deck, would be liable to contribute in a case of general average. Or, secondly, when the *whole* adventure was never in jeopardy, and the sacrifice, if it can be so called, was not made for the *general benefit*. Or, thirdly, when the loss or damage was the immediate effect of some peril, or accident, and not a voluntary sacrifice for the general safety; to which class may be referred all loss or damage done to the ship, or goods, by tempest, collision with other ships, enemies, pirates, or other perils, as well as all loss or damage incurred by the ship's tackle, in the course of its application to the purposes for which it is intended; and all those charges and expenses which belong peculiarly to the character of the ship-owner, and ought to fall upon him alone. Thus, where the hausers and towing ropes were broken from the violence of the storm, or in consequence of collision with another vessel, it was held their loss could not be made the subject of contribution; since these ropes were not *sacrificed* by the master, but broken in the course of their application to the ordinary purposes for which they are provided. Nor is the damage done to a ship by standing out to sea with a press of sail, in order to avoid an impending peril of being driven on shore and stranded a subject of general average, even though in consequence of the exertion thus made the ship is much strained, the seams opened, and the ship otherwise much injured. It is only a *common sea risk*, and no injury occasioned by mere sea damage can be the proper subject of general average. Or, fourthly, no claim to general average can arise, unless the sacrifice produced the desired effect of saving the ship and cargo. Thus, in a case of jettison, if the ship be not saved by the jettison, but perish in the storm, no contribution shall be made. But if the ship, being saved by the jettison, be afterwards wrecked in another place, the goods saved from the wreck, shall contribute to the loss of that which was cast overboard in the first peril. It is not, therefore, necessary, in order to found an average claim, that the ship should arrive at the port of destination; it is sufficient if the sacrifice be effectual at the time it is made.

~ *Contribution in Cases where the same Person owns the Ship, Cargo, and Freight.* — The rule that all the different subject-matters, or species of property, shall contribute in case of a sacrifice made for the benefit of the whole, is not affected by the fact, that the various species of contributory property are owned by the same person. Thus, if a person were the owner of the ship, cargo, and of course the freight, and he should in-

sure the ship at one office, the cargo at another, and the freight at a third; and a mast should be cut away, or any other injury done to the ship, for the safety both of the ship and cargo, the insurers of the ship would not be obliged to sustain the whole loss, but can call upon the insurers of the freight and cargo to contribute as for a general average. So, if the owner both of the ship and cargo should only insure the ship, and a jettison of a portion of the cargo was made during the voyage for the safety of the ship and cargo, this would be a case for a general average; and the insurer of the ship must pay the owner his average share of the loss on the cargo and *vice versa*.

*Who must Claim the Contribution.* — In Pennsylvania, it has been decided that the insured, in a case where he has a right to call on other parties for a contribution, cannot recover of the underwriters the whole amount of the loss, until he has first tried to recover the amount of contributions due from other parties. In New York, however, a contrary doctrine has been held, and the insured may, in the first instance, recover of the underwriters the whole amount of the loss, and leave them to compel the other parties to contribute. Perhaps the Pennsylvania doctrine is the best, as in cases of general average, the master and owners of the ship may retain all the goods of the shippers, until their share of the contribution towards the average is either paid or secured.

*Contributory Value of the Ship, Cargo, and Freight.* — *And, first, of the Ship.* — The value at which the ship ought to contribute, is *its worth to the owner at the time it is saved*; for it is in respect of safety that contribution is demanded. The true amount is said to be, that which the hull, masts, yards, sails, rigging, and stores would produce after the sacrifice is made, with the addition of the amount made good by the general average contribution. The seamen's wages are exempt from contribution; and the ship's victuals and ammunition appear to be also excluded.

*Of the Cargo.* — All merchandize conveyed in the ship for the purpose of traffic contributes, whether belonging to merchants, to passengers, to the owner, or to the master, of whatever kind, and however small be their weight in comparison to their value. For the contribution is made not on account of incumbrance to the ship, but of safety obtained. But ship provisions, the persons of the passengers, wearing apparel, and such jewels as merely belong to the person, do not contribute. The market price of the goods at the place of destination should be adopted as the guide for valuing either the goods remaining, and which are to contribute for the loss, or the goods thrown over for the general safety.

*Of Freight.* — Freight also forms part of the contributory interest. The contributory value of the freight is the value of

the freight saved, after deducting therefrom the seamen's wages and expenses in an ordinary voyage. In Massachusetts, it has long been the practice, in cases of general average, to ascertain the contributory value of the freight by deducting one-third of the gross amount. This rule avoids the embarrassment of nice calculations about small items, which it would in some cases be difficult to make with any exactness.

*The Place of Adjustment.* — The place at which the average is to be adjusted is, in general, the place of the ship's destination or delivery of her cargo. Convenience appears to require that this rule should be adopted, not only because the master is then better able to ascertain the contributory value of the goods, but because he will then exercise his right of lien, and not part with the possession of the goods, until the sum contributable has been paid, or secured to his satisfaction. But accidents may happen, which may cause a contribution before she reach her destined port. Thus, when a vessel has been obliged to make a jettison, or, by the damages suffered soon after sailing, is obliged to return to her port of discharge, the necessary charges of her repairs, and the replacing the goods thrown overboard, may then be settled by a general average. Of course, in such case, the contributory value of the goods must be ascertained by referring to the value of such goods in that port.

*Of Total Losses and Abandonment.* — Losses are of two kinds, total and partial. The insured may recover as for a *total loss*, not only when there has been an absolute destruction of the thing insured; but when, by the happening of any of the misfortunes or perils insured against, the voyage is lost, or not worth pursuing, and the projected adventure is frustrated; or when the thing insured is so damaged and spoiled as to be of little or no value to the owner; or when the salvage is very high; or when what is saved is of less value than the freight; or when further expense is necessary, and the insurer will not underwrite, at all events, to pay the expense.

But in such cases, where any part of the property remains, the insured, in order to be entitled to a claim upon the insurance company for a total loss, must, in the first place *abandon*, that is, he must renounce and yield up to the insurers all his right, title, and claim to what may be saved, and leave it to them to make the most of it for their own benefit. The insurer then stands in the place of the insured, and becomes legally entitled to all that can be rescued from destruction. The object therefore of an abandonment is to turn that into a total loss, which otherwise would not be; for the very idea of *abandonment* presupposes a *constructive* total loss merely, and implies that something remains which may be saved, and which may be given up, or *abandoned* to the insurers. The principle of law in respect to the necessity of an abandonment, is this, that where the



property, though injured, is not destroyed, and the insured has any legal interest which he can convey, he must abandon in order to be entitled to claim for a total loss. On the other hand, where there is nothing to abandon, as where the property is entirely destroyed, or the owner has been legally divested of the title by a lawful sale, an abandonment would be of no benefit to the underwriters, and is not necessary.

The title may be thus legally divested, in certain cases, by a sale of the property by the master of the ship. It is true that a master of a vessel, as such, has no authority to sell the vessel or the cargo, unless in case of *extreme necessity*, and where he acts with the most perfect good faith, for the interest of those who are concerned in the property. Whether the case is one of extreme necessity, and whether the master has acted in good faith for the interest of all concerned in the property, is a question for a jury to decide. And where, upon an injury happening to the ship, the master, in good faith, calls a survey, and the persons selected to make the survey, are competent in point of skill and wholly disinterested, and they, after a careful and sufficient examination of the vessel, find her materially injured, and come to a fair conclusion that, from the high price of materials, and of labor, or the difficulty of procuring them, the expense of repairing will be more than the worth of the vessel after she is repaired, and therefore they advise, for the interest of all concerned, that the vessel be sold, the captain would seem to be in duty bound to act in accordance with their advice. Even in such a case, however, the question would still have to be submitted to a jury to decide whether, upon all the evidence, giving due weight to the opinion of the surveyors, they are satisfied that the *sale was necessary*.

It is a general rule, that, where the master is in a situation to communicate with the owner or his agent, as in the case of a vessel stranding on a home shore, he is not authorized to sell without consulting the agent or the owners. If, however, there is such an urgent necessity for the sale, as renders every delay highly perilous or ruinous to the interests of all concerned, the master ought not to wait till he can hear from the owner, but should sell her, if he deem it best for the interest of all concerned; and, in such case, it makes no difference, whether the vessel be stranded on the home shore, or on a foreign shore, whether the owner's residence be near or at a distance. Where the property has thus been sold from necessity, of course there is nothing to abandon, and, consequently, there is no necessity of any abandonment. The proceeds of such a sale must be held by the master to the use of the underwriters, it is their property without any abandonment; and if it come to the hands of the insured, it may be deducted from the loss as so much paid.

*When an Abandonment is allowed:— Of the Ship.*— The right of abandonment exists, where the vessel is captured, or the owner is deprived of the free use of the ship, as in the case of detention by embargoes, blockades, and arrests; where the vessel has been wrecked, and where the injury is so great, that the cost of repairs would exceed half the value of the vessel. The right to abandon exists whenever, from the circumstances of the case, the ship, for all the useful purposes of a ship for the voyage, is for the present gone from the control of the owner, and the time when she shall be restored to him in a state to resume the voyage, is uncertain, or unreasonably distant, or the risk and expense are disproportionate to the expected benefit and objects of the voyage.

Shipwreck is generally a total loss. What may be saved of the ship or goods is so uncertain, and depends so much on accident, that the law cannot distinguish this from the absolute destruction of the whole. The *wreck* of the ship may remain, and may be saved, but the *ship* is lost. A thing is said to be destroyed when it is so broken, disjointed, or otherwise injured, that it no longer exists in its original nature and essence. If, however, a shipwreck occurs, without material injury to the vessel, so that she may be repaired in a reasonable time, at a reasonable expense, and resume her voyage, no right of abandonment attaches. Whether the right of abandonment exists or not, is to be judged of from all the circumstances of the case.

So, the mere *stranding* of the ship is not, of itself, deemed a total loss, so as to entitle the insured immediately to abandon. By some fortunate accident, by the exertions of the crew, or by extraneous assistance, the ship may be again floated, and rendered capable of pursuing her voyage. In such case the insurers are only answerable for the expenses occasioned by the stranding; and, as liable for a partial loss, they must pay the insured his reasonable charges for getting the ship off, and for repairing the damages she may have received by the stranding. But, undoubtedly, when by the stranding the voyage is defeated, the owner may abandon. And the stranding of the ship may prove the destruction of the voyage, either by her afterwards becoming a wreck, before she shall be put afloat, or by circumstances accompanying the accident. A ship may be driven on some beach without sustaining essential injury, although she may be bilged; but in good weather may be easily got off, and repaired so as to prosecute her voyage; but if she be wrecked by a subsequent storm, while she remains stranded, the owner may abandon. Or, if the ship be stranded on a part of the coast, where no assistance can be procured to get her afloat, or where there may be no materials or workmen for repairing the damage she may have sustained; the voyage is then lost, and the assured may abandon. Or, if the ship be stranded in

place where assistance, materials and workmen may be easily procured, but it may be doubtful whether the attempt to get her off will succeed, while the expense is certain : if the insurers, on having notice, will not engage to pay the expenses of the attempt, and also to repair the vessel, if the attempt should succeed, the assured may abandon. So, the *submersion* of a ship may not amount to a total loss ; for she may be in a situation where, by the application of proper means and skill, she may be raised and removed as effectually as if above water. Of course, the rule as to the extent of the injury, or the amount of the damage requisite to justify an abandonment were the vessel afloat, would justify an abandonment in case of submersion. The insurers, to avoid the claim for a total loss, in such case, must make it appear that the ship remains a good and sound vessel, capable, after reasonable repairs, of performing voyages and carrying cargoes ; but whether she is so or not, does not depend upon the single circumstance of submersion. \*

But though the injured ship may be in a situation, where repairs can be easily made, yet it is well settled in this country, that if the cost of repairs will exceed *one-half* the value of the vessel, then the owner may abandon to the underwriters. In ascertaining whether the vessel could have been repaired for less than one-half of her value, the Massachusetts and New York rule is, that the valuation of the vessel as fixed by the parties in the policy, is to be taken as her true value, and the parties will not be permitted to show what is her *real* value. A contrary doctrine has, however, been held by the Supreme Court of the United States ; and it has been decided by that court that, in respect to the mode of ascertaining the value of the ship, and, of course, whether she is injured to the amount of half her value, the true basis of the valuation is the value of the ship at the time of the disaster ; and that if, after the damage is or might be repaired, the ship is not, or would not be worth, *at the place* of the repairs, double the cost of the repairs, it is to be treated as a technical total loss ; and that, consequently, the valuation of the vessel in the policy, or the value at the home port, or in the general market of other ports, constitutes no ingredient in ascertaining whether the injury by the disaster is more than one-half the value of the vessel or not. It was also held, that the ordinary deduction in cases of a partial loss of *one-third* new for old, from the repairs, is inapplicable to cases of a technical total loss, by an injury exceeding one-half of the value of the vessel.

By the well settled principles of law, the state of *facts* and not the state of the *information* at the time of the abandonment, constitutes the true criterion by which we are to ascertain whether a total loss has occurred or not, for which an abandonment can be made. If the abandonment, when made, is good,

the rights of the parties are definitely fixed, and do not become changed by any subsequent events. If, on the other hand, the abandonment, when made, is not good, subsequent circumstances will not affect it, so as, retroactively, to impart to it a validity which it had not at its origin.

Although the right of the insured to abandon in case of an injury or damage to the vessel, must depend upon the fact of such injury or damage existing at the time of the abandonment, yet it is necessarily open to proofs, to be derived from subsequent events. Thus, for example, if the repairs, when subsequently made, clearly exceed the half value, it is plain that this affords one of the best proofs of the actual damage or injury. On the other hand, if the subsequent repairs are far below the half value, this, so far as it goes, affords an inference the other way. But it is not always sufficient, in order to avoid the right of the insured to abandon, to show that the injury to the vessel was actually repaired for a sum less than one-half her value. In many cases of stranding, the state of the vessel at the time may be such, from the imminency of the peril, and the apparent extent of expenditures required to deliver her from it, as to justify an abandonment; although, by some fortunate occurrence, she may be delivered from her peril, without an actual expenditure of one-half of her value after she is in safety. Under such circumstances, if, in all human probability, the expenditures which must be incurred to deliver her from her peril are, at the time, so far as any reasonable calculations can be made, in the highest degree of probability beyond half her value, and if the distress and peril are such as would induce a considerate owner, uninsured, and upon the spot, to withhold any attempt to get the vessel off, because of such apparently great expenditures, the abandonment would doubtless be good.

In Massachusetts it has been held, that, where the insured refuses to repair the vessel, but abandons her and claims the right to recover as for a total loss, the underwriters having refused to accept the abandonment, may take the vessel into their possession and repair her; and if the expense of the repairs does not exceed half her value, they may restore her to the insured without his consent, and thus avoid paying for a total loss. In such case, however, the underwriters must repair and restore her to the insured within a *reasonable time*, otherwise the abandonment will be good. A contrary doctrine was held by Judge Story, who decided that as the insured, after having elected to abandon the vessel and go for a total loss, could not then go on and repair her without, by so doing, waiving his abandonment; so, if the underwriters after having refused to accept the abandonment, should take her into their possession for the purpose of repairing her, they would by that act be deemed to have accepted the abandonment notwith-

standing their refusal so to do, and be obliged to pay as for a total loss. By this decision it would seem that, where the insured has abandoned, and the underwriters have refused to accept it, both parties, in order to preserve their rights, must lie by and wait till the question, as to the right of abandonment under the circumstances, be judicially determined.

The law gives to the insured and not to the underwriters, the option to abandon or not. The insured is in no case bound to abandon. He may in all cases, elect to repair the damage at the expense of the underwriters; and if he acts *bona fide* and with reasonable discretion, it seems he would be entitled to recover a full compensation, however great it may be, even if it should equal, or exceed, the original value of the ship.

*Of Goods.* — Where the goods insured are damaged to an extent exceeding one-half their value, by any peril insured against, the insured may abandon, and recover as for a total loss. The cargo may be abandoned, and the insured recover, as for a total loss, not only where it has been completely destroyed, or damaged to an extent exceeding one-half its value, but also where the carrying ship receives a permanent injury during the voyage, and is thereby prevented from conveying the goods to the port of destination, and there is no other means of conveyance. The mere fact, however, that the carrying ship is destroyed or disabled from proceeding on her voyage, is not sufficient to warrant an abandonment of the cargo; for if the cargo be not damaged to an extent exceeding one-half of the invoice value, it is the duty of the master, upon the ship's becoming disabled, to procure another vessel, if it is in his power, to carry on the cargo to its destined port. The general rule, as to the amount of diligence the master is bound to exercise, in procuring another vessel to complete the carriage of the goods, is that, if he can procure another vessel at the port of distress, or at a port immediately contiguous thereto, he is bound to do it; but if no vessel can be procured either at the port of distress or one near at hand, the insured may abandon, and recover for a total loss. But this rule, it would seem, must be taken with reasonable qualifications. The master, undoubtedly, ought to follow it, in cases of difficulty and doubt; as where he would be obliged to send the cargo, not to a contiguous port, but to a distant place, for re-shipment, or where the transportation would be difficult and hazardous. The object of the rule was to furnish a guide to the master, in cases where, but for some such rule, it would be difficult for him to know how to act. But where it is reasonable that the master, taking into view the nature of the voyage, and the time, expense, and risk of transportation to the port of destination, should procure another vessel to send on the cargo, and a vessel can be procured at a port within a reasonable distance, though it is not geographically contiguous to the port of distress, he is bound to do it.

And it seems he would be bound to do it, even though it should be necessary to make use of land carriage in order to re-ship the goods. It may happen that the transportation by land to a convenient port, might be more safe and expedient, than a transportation for a less distance to an open roadstead, for the purpose of re-shipping the goods,—the roads and conveniences for land conveyance might be good, while it might be difficult and hazardous to transport the goods from the shore to a ship beating in open sea,—in such case, the former rather than the latter mode of re-shipment should be adopted, even though it should become necessary thereby to carry the goods to a port not the nearest to the port of distress. The goods may therefore be abandoned by the owner, in all cases, where they have been damaged, by one of the perils insured against, to an extent exceeding one-half their invoice value; or where the carrying ship, having become permanently disabled, so that she cannot proceed to the port of destination, the expense of procuring some other means of conveyance would exceed the value of the goods,—or, the ship being thus disabled, no vessel can be procured, either at the port of distress, or at one within a reasonable distance; or, where the vessel, though damaged, may be repaired, yet the cargo, being of a perishable nature, will be irretrievably destroyed by the delay to repair. The mere retardation of the voyage by a peril insured against, if the vessel can be repaired in a reasonable time, unless the cargo be of a perishable nature, does not amount to a total loss of the cargo, so that the owner may abandon. The underwriters do not warrant the *time* of the voyage, but simply that the cargo shall be capable of arriving at the port of destination, notwithstanding any of the perils insured, against.

*Of Freight.* — Of course, if the cargo is lost, or if the ship is lost or permanently disabled during the voyage, and the cargo is thereby lost, or no vessel can be obtained to complete the transportation of it to the port of destination, no freight can be claimed of the owners of the cargo, and the insured may recover of the underwriters the insurance on the freight. So, we have seen that, if a ship sail in performance of a contract of affreightment, though no goods be actually on board, and she is lost, the owner may recover the amount of freight insured. (See page 55.) But a total loss of the ship is not always followed by a total loss of the freight. The master, as we have seen, is in duty bound, if it is in his power, where the ship is lost, or becomes permanently disabled during the voyage, and the cargo remains, to procure another ship to complete the transportation of the goods. (See page 83.) If the master succeeds in procuring another vessel, and the cargo is thus conveyed to the port of destination, the freight is earned, and the insured has lost only a portion of the freight,—the amount

paid the other vessel, or a proportional part of the freight, according to the part of the voyage not performed. If in such case, the expense of sending on the cargo by another vessel will exceed *one-half of the freight*, it is a technical total loss of the freight, which will authorize the insured to abandon and recover as for a total loss; he thus throws the risk and expense of collection, and other incidental expenses, upon the underwriters, and recovers the whole amount insured without delay.

If the cargo is carried to the port of destination, and *specifically remains*, though by reason of sea-damage it is utterly ruined and worthless, yet the owner of the ship is entitled to the full freight for the voyage, and therefore there being no loss of freight, the underwriters are not liable. And if the ship, being damaged so as to be obliged to put into an intermediate port for repairs, can be repaired within a reasonable time, so as to be able to proceed on her voyage, the master has a right to retain the cargo until the ship is repaired, and he is thereby enabled to complete the transportation of it, and by so doing he is entitled to *full freight*. And, in such case, the owner of goods cannot claim them at such intermediate port, without paying *full freight*, even though the cargo is so damaged that, if carried on in such a state to the port of destination, it will be utterly ruined; or, if by reason of the delay necessary to complete the repairs, the cargo, being of a perishable nature, would be utterly spoilt and worthless by the time it reached the destined port — Nor will it make any difference in this respect, that by such detention and retardation of the voyage, the arrival of the cargo at the place of destination will be so late as to disappoint the purposes of the shippers, by the change of the season, loss of markets, or otherwise. If, therefore, in such cases, the master voluntarily relinquishes his right thus to retain the cargo and complete its transportation, by giving it up to the shippers or their agent at such intermediate port, he loses the right of earning the freight on that particular cargo, by such voluntary act, and not by one of the perils insured against, and therefore the underwriters on freight are not answerable.

Where, however, the master is thus obliged to put into some intermediate port, for the purpose of making necessary repairs, he is to be considered not only as the agent of the ship-owners, but also as the agent of all concerned, and especially of the owner of the cargo. If, therefore, the cargo in such case is of a perishable nature, or is so damaged, that to proceed with it in its present state will endanger the ship and the cargo, and it will become utterly worthless on its arrival at the port of destination, it is the duty of the master to sell the same at such intermediate port. The owner of the ship would nevertheless be entitled to full freight, and consequently would have no claim upon the underwriters.

*Within what time Abandonment must be made.* — Where the insured receives intelligence of such a loss as entitles him to abandon, he must give the underwriters notice in a reasonable time; otherwise they waive their right to abandon, and can only recover for a partial loss. When it is said that the insured must abandon in the first instance, it is meant that he must abandon immediately after he has had a convenient opportunity of examining into the circumstances, which render abandonment expedient or otherwise; because it is on the result of such an examination, that he is to make up his mind, whether he will abandon or not. It must not be understood, however, that the insured may delay making an abandonment for the purpose of ascertaining the state of the market, and as the market falls or rises, elect whether he will abandon or not. Any such delay would amount to a waiver of his right to abandon. The only delay that can be made, if it can be called a delay, is for ascertaining the nature and extent of the injury, and whether it is sufficient to warrant an abandonment, without reference to the state of the market.

The insured have, in different cases, been held to have waived their right to abandon by a delay of forty-five, thirty, nine, or even five days; where no reason could be given for the delay.

An *underwriter* who rejects an abandonment must also do so in a *reasonable* time.

*Mode of Abandonment.* — When an abandonment is made, it must apply to the whole subject of insurance; the insured cannot make an abandonment of part; it must apply to the whole of an entire subject of insurance, or it will be no abandonment. On a loss taking place, the insured cannot abandon part of what is saved out of one *entire subject* of insurance, and retain the other part. Neither can an abandonment be made subject to certain conditions specified by the insured, unless indeed the underwriters accede to those conditions, and by their assent in effect enter into a new agreement with the insured. With respect to the precise form of an abandonment no particular one is required, it is sufficient if it be *express and positive*. It is not necessary even, that it should be in writing, though it is perhaps better to do so, and to use the word "*abandon*."

*Notice of Abandonment.* — Notice of abandonment may be given by, or to the parties to the contract, or agents in their behalf. When several persons are jointly interested in a cargo, and some of them cause a policy to be effected on the behalf of themselves and others, it seems that those who cause it to be effected are to be considered agents for the rest, and therefore competent to give notice of abandonment. The notice of abandonment may be given to the underwriters, or their authorized agents.



*Of Partial Losses and Adjustment.*—Of course, wherever the property insured is injured by any of the perils insured against, the owner may recover the amount of the loss from the insurers. It is only necessary to show how such loss is adjusted.

*Of Ship.*—When a ship partially damaged has been repaired by the owners, the practice is to deduct one-third from the cost of the repairs, in consideration of the benefit which the owners derive from new materials in lieu of the old. This rule is intended to prevent nice calculations as to the amount of damages; and is adopted on account of the impossibility, in most cases, of proving the actual deterioration of the vessel by the wear and tear of the voyage. It makes no difference if the vessel be new, it being her first voyage; the same rule of one-third deduction, new for old, applies.

*Of Goods.*—The value of the goods is to be estimated according to the invoice price, or the valuation in the policy; and the insurer is not liable for the rise and fall of the market, or for a loss that may arise from the difference of exchange. Insurance is a contract of indemnity against the perils of the voyage; the insurer engages, so far as the amount of the prime cost, or value in the policy, "that the thing shall come safe;" he has nothing to do with the market; he has no concern in any profit or loss, which may arise to the merchant from the goods; if they be totally lost, he must pay the prime cost, that is, the value of the thing insured at the outset; he has no concern in any subsequent value. So, likewise, if part of the cargo, capable of a several and distinct valuation at the outset, be totally lost; as if there be one hundred hogsheads of sugar, and ten happen to be lost, the insurer must pay the prime cost of those ten hogsheads, without any regard to the price for which the other ninety may be sold. Where an entire thing has been partially injured, as, if one hogshead of sugar were partially damaged, the following is the rule for calculating such a partial loss. Suppose the damaged article sells at the port of delivery for ten dollars, and the same article, perfectly good and sound, would have sold for twenty; here the article has been damaged one half of its value; the loss then is one half the prime cost, (usually the invoice price,) and the underwriters are liable to that extent, &c

*Of Freight.*—Where the ship, by reason of any of the perils insured against, is permanently injured during the voyage, so that she cannot proceed, and the master is obliged to hire another vessel to complete the conveyance of the cargo, here of course, has been a partial loss of freight, for which the underwriters are liable. So, if a part of the cargo be lost, and the ship is thereby prevented from earning her full freight, the underwriters are liable for the deficiency. The subject has been, however, already fully treated. (See pages 84, 85.)

*Return of Premium.* — A return of premium may become due, either by express stipulation, or by tacit operation of law and the usage of merchants. By express stipulation, as where a clause is inserted in the policy to return a certain per centage if the ship sail with convoy and arrive, — if she sail by a certain time, — or discharge at a certain place, and arrive in safety, &c. By tacit operation of law and the usage of merchants; as in the case of the risk not being run, or the policy becoming void. And where the risk has not been run, whether its not being run was owing to the fault, pleasure, or will of the insured, or to any other cause, the premium shall be returned; because a policy of insurance is a contract of indemnity. The underwriter receives a premium for the risk to be incurred, and if he does not run the risk the consideration for the premium fails, and therefore he ought to return it.

The most simple case of a return of premium is from the failure of the interest. When a policy is made on goods, and no goods are put on board the ship, the insured may recover back the premium; for as the risk contemplated by the parties was not incurred, the consideration of the contract fails. The return of premium for *short interest*, or over insurance in the case of a valued or open policy, rests upon the same foundation. This occurs where a part only of the goods embraced in the policy is put on board; a corresponding portion of the premium must then be returned. But in the case of a valued policy, if all the goods to which it was intended to apply, though not being of the value, were put on board, there can be no return of premium for short interest, because the entire risk attached.

When the risk embraced by the policy is entire, and has once *commenced*, there can be no return of the premium, or any part of it. This rule applies, whether the policy is effected for a certain period of time, or upon a certain voyage. Thus, where the insurance is for twelve months, at a certain rate per month; and the risk ceases at the end of two months, there can be no apportionment or return of premium. Thus, we have seen, that a policy of insurance effected on a vessel "*at and from*" a certain port, attaches and *commences* running while the vessel lies in that port; and that the risk having thus commenced running, the insured cannot recover back the premium, though the policy was subsequently rendered void by the ship's sailing in an unseaworthy condition. (See page 64.)

## CHAPTER IV.

## INLAND INSURANCE, AND COLLISIONS.

INLAND INSURANCE. — By this term is meant, the insurance of vessels of every description, at risk on our rivers and inland waters. The principles of law applicable to it, are the same as those which govern *Marine Insurance*. It makes no difference, whether the property insured is a steamboat or a sailing vessel, as it has been decided that the laws of marine insurance govern and regulate the insurance of steamboats as well as of sailing-vessels,—of vessels employed on our inland waters as well as of those engaged in foreign trade. Persons, therefore, procuring insurance upon any species of property, at risk on our rivers and lakes, must refer to the subject of marine insurance in order to ascertain their rights and duties. There are, however, a few cases of inland insurance, which it may be useful to state, and which will, therefore, be inserted in this chapter.

By a decision in Tennessee, it seems that it is not customary to lash flat boats, descending the Mississippi, laden with produce, to a steamboat to be towed, and that it is a violation of the contract of insurance to do so.

An action was brought to recover the insurance effected on some tobacco, shipped on board a flat-boat in Smiths County to be conveyed to New Orleans. At the trial, it appeared that the boat, being run into, during her passage, by a steamboat, put into Vicksburg; and that while there the master caused her to be examined, and thinking that she might be towed with safety to New Orleans, procured a steamboat for that purpose. On the passage to this latter city the flat-boat was lost. It was held to be a deviation to lash a flat-boat to a steamboat to be towed, and the insurers were therefore discharged. The Court said that, if, after the occurrence of the accident, it had been deemed necessary to tow the boat to the first convenient landing, or port, for the purpose of reparation, or reshipment, it would have been very proper, and would not have amounted to a deviation. But that, in this case, the flat-boat having, after the accident, sailed into Vicksburg, the master, if the boat was unable to proceed on her voyage, ought to have repaired her, or else procured some other vessel to complete the carriage of the cargo; and that his procuring a steamboat to tow his vessel to New Orleans was such a violation of the contract of insurance, as to discharge the insurers from their liability thereunder.

It is a deviation for steamboats, while on their passage, to take vessels in tow, unless authorized in the policy of insurance, or by a long established usage, so general, and so well known,

that it is fair to presume the parties contracted in reference to it ; and if they do so, the insurers will be thereby discharged.

An insurance was effected on the steamboat Fort Adams, against the adventures and perils of the river, of fire, and all other perils, losses and misfortunes, that might happen in the navigation from port to port. The steamboat, while on her passage to New Orleans, loaded with cotton, took in tow a brig, and was afterwards lost. It was held, that taking the brig in tow amounted to a deviation, and that the insurers were thereby discharged. For the same reason, the insurers were not held liable under a policy of insurance effected on the cargo.

The loss of a steamboat, occasioned by the explosion of her boiler, is covered by a policy containing the usual marine risks. A policy on ships covers losses arising from accidents to the power which moves them, and, it must be presumed, that the parties contemplated the same protection to a steamboat, when the loss occurs to her machinery.

In Ohio it has been decided, that the insurers are not liable for the expense of delay, wages, and provisions of the crew of a steamboat, while detained for repairs, though the crew are employed in making the necessary repairs.

An insurance of the body, machinery, tackle, and furniture of a steamboat, covers the costs of repairing any injury to either within the policy, and the expense of towing her to the nearest port for repairs.

Where fire is one of the enumerated risks in a policy on a steamboat, a loss by fire will charge the underwriters, though occasioned by the negligence of the officers or crew.

So, where a steamboat was lost by the explosion of the boiler, arising from the negligence of the master, and other agents of the insured, it was held that the insurers were liable.

A distinction must, however, be taken, between losses which arise from a want of capacity and skill in the officers, and those which are the result of mere negligence. For losses occasioned by the former cause, the insurers are never liable.

The insurers would not be liable for a loss occasioned by the negligence of the master or crew, where such negligence was so gross as to raise the presumption of fraud, which would amount to barratry, unless the policy expressly insures against barratry.

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### COLLISIONS.

**COLLISIONS OF SHIPS.** — A learned judge has said, that there are four possibilities under which an accident of this sort may occur. In the first place, it may happen without blame being imputable to either party ; as where the loss is occasioned by a storm, or any other *vis major*. In that case, the misfortune must be borne by the party on whom it happens to light ; the other not being responsible to him in any degree. Secondly, a misfortune

of this kind may arise where both parties are to blame ; where there has been a want of due diligence or of skill on both sides. In such case, the rule of law is, that the loss may be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party, and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down ; and in this case, the injured party would be entitled to an entire compensation from the other.

There are certain nautical rules by which, in most cases, the question of negligence is decided. Thus, if a vessel is going close-hauled to the wind, and another meeting her is going free, the rule of the sea is for the latter vessel to go to the leeward ; and although such vessel may either go to the leeward or windward, as she best can, yet she ought, as a general rule, to suppose that the vessel going to the windward will keep her position. If two vessels are beating to windward on opposite tacks, it is the duty of the vessel on the starboard tack to continue her course, and that on the larboard to give way ; and when both vessels have the wind large, or abeam, and meet, they should pass each other on the larboard hand, to effect which the helm must be put to port.

These rules do not apply where one of the vessels is a steamboat ; for steamboats, from their greater power, ought always to give way. A steamboat is considered as always sailing with a fair wind, and is therefore bound to do whatever a sailing vessel, going free, (or with a fair wind) would be required to do, under similar circumstances, in relation to any vessel she may meet. A steamer which, going in a fog with unabated speed, in a track frequented by coasters did not, when hailed, order her engines to be stopped, and a collision ensued, was held liable to the amount of damage and cost. In England, a rule is established, that when steamboats on different courses must unavoidably or necessarily cross so near that, by continuing their respective courses, there would be risk of coming into collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other.

But although there may be a rule of the sea, yet a man who has the management of one ship, is not allowed to follow that rule, to the injuring of the vessel of another, when he could avoid the injury by pursuing a different course.

Where a sailing vessel, which was towed by a steamboat on the Mississippi River, ran into another vessel, through the negligence of the master of the steamboat, the owner of the sailing vessel was held not liable for the damage sustained by the other vessel. The collision, in such case, is as directly attributable to the steamboat as if she herself had come into collision with the other vessel. The towed ship is the passive instrument and means, by which the damage is done.

A vessel at anchor in a navigable river, or port of much commerce, ought always to have a light hung out conspicuously in dark nights.

The vessel to windward is to keep away when both vessels are going the same course in a narrow channel, and there is danger of running afoul of each other. In a river, if a light vessel is going free, and a loaded vessel is coming close-hauled to the wind, it is the duty of the loaded vessel to keep her course, and of the vessel going free to bear away.

In New York, every boat navigating the canals at night, is required to carry conspicuous lights on its bow.

When boats meet on the canals, it is the duty of the master of each to turn out to the right hand, so as to be wholly on the right side of the middle of the canal.

A neglect of due means to check a vessel entering a river or harbor where others lie at anchor, is a fault which creates responsibility for damages which may ensue.

But if a vessel anchors in an improper place, as in the thoroughfare pass of a river, her owner must abide the consequences of a collision.

An order to put a steamboat under headway, under her usual press of steam, just as she is entering a narrow channel, at night, when it is difficult to distinguish objects, amounts to gross neglect.

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## CHAPTER V.

### MERCHANT SHIPPING.

#### CHARTER-PARTY.

A **CHARTER-PARTY** is a contract for the letting of the whole or part of a ship to a merchant, called the freighter or charterer, for the conveyance of goods for one or more voyages, and is either under seal or in writing only.

But a memorandum of a charter party, or heads of agreement for the formation of one, are as common between the ship-owner and freighter as charter-parties themselves; and are equally as binding as if a more formal instrument had been executed.

1. *The Usual Stipulations.*—Charter-parties on the part of the owner or master, are, that the ship shall be tight and staunch, that is, seaworthy, and in a condition to carry the goods; that she shall be furnished, with all necessaries for the intended voyage, as well on her departure as in the course of the voyage; that she shall be ready by a day appointed to receive the cargo, and shall wait a certain number of days to take it on board; that, after having received her laden, she shall sail upon the destined voyage, with

the first fair wind and opportunity (the dangers of the seas and accidents excepted), and deliver the goods at the destined port, to the merchant or his assigns, in the same condition as they were received on board; and further, that during the course of the voyage the ship shall be kept tight and staunch, and furnished with a sufficient and competent crew, and with all stores and necessaries, to the best of the owner's endeavors.

The freighter, on his part, usually covenants to furnish a cargo, and to load and unload the ship within a limited number of days, (which are called lay or running days,) after she shall be ready to receive the cargo, and after arrival at the destined port; and to pay the freight after the rate and at the time appointed. It is also usually stipulated that the ship shall, if required, wait a further time to load and unload, and (in the time of war) to sail with convoy, for which the freighter covenants to pay a rate of demurrage per diem, in case of the vessel's detention beyond her lay or running days. Sometimes, also, particular clauses are introduced in favor of the owners, to take away their responsibility for embezzlement by the master, or other matters, for which they would otherwise be responsible. The deed then concludes with a penal clause binding each of the parties, his heirs, and executors, in a pecuniary penalty, for the true performance of their respective covenants.

2. *When it takes its Effect and Operation.* — A charter-party takes its effect and operation from the day of its execution or delivery, and not from the day of its date, if different from the day of delivery, unless the contrary should appear on the face of the instrument to have been the intention of the parties.

3. *By whom it may be Executed.* — This instrument is executed by the parties privy to it, namely the shipowners or the master, and the owners of the goods or freighters. It may be also executed by an agent lawfully authorized on the part of the owner, or merchant, who may covenant in his own name for performance by his principal, so as by force of the deed to answer for his principal's default. But if the authority of such agent arises from a power of attorney, then the execution must be in the name of his principal.

When the master executes the charter-party, his act will not bind the shipowners, unless he have been authorized, by deed or power of attorney to enter into such contract.

4. *Its Construction.* — It is a general rule that the construction of charter-parties should be according to the principles of equitable interpretation, and, therefore, where it was covenanted that the ship should sail on the intended voyage with the first fair wind, it was held not to mean the next wind, but such a wind as would enable the vessel to perform the voyage.

Neither will a short delay in setting sail, or any trifling departure from the direct course of the voyage, annul the contract, and leave the shipowner without consideration. Should the charterer have sustained any loss thereby, or have been put to any extraordinary expense, he is entitled to a compensation commensurate thereto in a cross action. Where a ship is freighted to go in ballast to a certain place; if she do not arrive by the specified time, the

freighter is discharged from his contract to furnish a cargo. So where a ship is freighted to take in a lading, and on arrival at the place of shipment, the lading cannot, from political or other circumstances, be effected, the freight stipulated for is due, provided the master has waited the time agreed for by the charter-party; notwithstanding that the ship returns in ballast, or that the master has taken a cargo on board, either on his own account, or that of the owners. And where the freighter has received some benefit, and the owner has rendered some service to the freighter, though only by the performance of part of the duty for which he contracted, he will be entitled to a remuneration, *pro rata*, for such part; but in the case of only part performance, the freighter will be entitled to recover a satisfaction in a cross action for the damage he has sustained by the imperfect performance of the contract, or its non-completion. If, before the departure of the ship, war or reprisals should be declared with the state to which the ship is bound, the charter-party is, *ipso facto*, dissolved, and neither party is liable to any damages or charges. But if the ports of the state to which the ship is bound be shut only for a time, by embargo or otherwise, the charter-party is still valid, and neither the freighter nor owner will have any claim for damage on account of the suspension of its performance. Should, however, the performance of the voyage have been prevented by embargo laid by the government upon foreign ships, the owner is discharged from his contract. Also, if the performance of the covenant has been rendered unlawful by the government of the contracting parties, the contract is dissolved. The usage of trade in general, and of the particular trade to which the contract relates, is also given effect to in the construction of charter-parties, provided such usage be good, and reasonable, and general. But although a charter-party is construed according to the principles of equitable interpretation, and that effect is given to the presumed intention of the contracting parties, yet positive and specific stipulations, however hard they may be, or incautiously entered into, will bind the parties.

Where, by the particular terms of the charter-party, coupled with the nature of the service in which the ship is employed, an intention to transfer the ownership to the charterer appears, such a possession or temporary property will be deemed to be vested in him as not to restrain his full and free use and employment of the vessel; and though the owner of the ship should, under such circumstances, appoint the master and crew, it will not alter the case.

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#### BILL OF LADING.

**BILL OF LADING** is the acknowledgment given by the master of a ship for goods shipped. It is a negotiable instrument. Several parts or copies are made out, one for the use of the master, the others for the shipper, who, by means of them, can give a title to the consignee or other person for whom the goods are destined, to receive them.

When the goods are put on board, a receipt is generally given by the master; this is afterwards exchanged by the holder for the bill of lading. It will be observed that there is a clause, as in bills of exchange drawn in sets, providing that one set being honored, the



others are void. The bill has two objects. It fixes the amount and condition of the goods received, and for which the shipmaster is responsible, [See *Freight*,] and conveys a title to demand delivery. It may, like a bill of exchange, be negotiated by simple indorsation and delivery, which will carry a right to the goods. No intimation to the shipmaster is necessary, he being bound to deliver to the holder. Notwithstanding the delivery of the negotiable instrument, the goods are still liable to be stopped *in transitu*, as in the hands of a middleman before they reach the consignee. [See page 53.] If the bill has been endorsed for value by the consignee, or his authorized agent, the property is passed, and the right to stop ceases. The right to stop is not barred by delivery of the bill unindorsed to a third party, nor by indorsation without value, or with knowledge on the part of the indorsee that the goods will not be paid for by the indorser, and that the transaction is fraudulent, nor where the indorsee has received notice of the consignee's insolvency. The indorsee however is not held bound to inquire into the ability of the indorser to pay for the goods, and to secure him it is not necessary that he should take the bill without notice that the goods have not been paid for; it is sufficient if he have not received notice of such circumstances as rendered the bill of lading not fairly and honorably assignable. Partial value will give an onerous right to a corresponding extent, and to that extent bar stoppage. Where the indorsee undertook to make advances which he failed to make, it was held that a claim on previous advances was no bar to the right to stop; but where the consignee, before his insolvency, and before the goods had arrived, has endorsed the bill of lading to a third party as a security for advances, the equitable right of the unpaid vendor to stop the goods (although he has no strictly legal right to resume possession even after the claim is satisfied) continues, subject only to the amount of such claim; and if the indorsee holds in his hands any other property belonging to the insolvent, the unpaid vendor has an equity to compel him to resort to it in the first place.

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#### FREIGHT.

**FREIGHT**, in its legal acceptation, is the money agreed to be paid for the carriage of goods from their port of lading to their port of discharge; and may be made payable either for the whole or part of a ship or cargo; or for the whole or part of the voyage; or by the month, or any other stipulated period.

In considering this subject, I shall distribute it into the following heads. 1st. The computation of freight; 2dly. When the whole freight is due; 3dly. When part only is due; 4thly. When Goods are deteriorated; 5thly. The lien for freight; 6thly. By whom freight is payable; and, 7thly. To whom freight is payable.

1. *The Computation of Freight.* — In framing a charter-party of affreightment, the burthen of the vessel, and the amount of the freight, as well as the particular nature of the voyage, are of material consideration. For where an entire ship, or the entire part of a ship, is freighted for a gross sum, whether the burthen is expressed or not in the charter-party, the gross sum is payable,

although the ship should not be of the stipulated burthen. But should there be a warranty, as to the burthen of the ship, then the freighter may recover damages for the owner's breach of warranty.

The amount of the freight is usually settled in express terms in the charter-party or bill of lading, and is generally a gross sum, or so much per ton, cask, bale, &c. Where the stipulated payment is a gross sum for the whole ship, or for any distinct part of it, the gross sum is payable, though the freighter should not be able to complete his lading. If the agreement specifies payment to be made for every ton burthen of the vessel, such payment is to be made according to the actual measure and capacity of the vessel, and not according to the quantity of the goods laden.

If the agreement be to pay a certain sum for every ton, cask, or bale, &c freight is payable only for as many tons, &c., as have been laden on board.

But where payment is to be by the ton, pipe, pack, &c., freight is not payable for any of the subdivisions of a ton, pipe, pack, &c., unless it is specified in the charter-party that a proportionate freight is to be paid for any less quantity than a ton, pipe, pack, &c., or that the freight is to be paid at the rate of so much per ton, pipe, pack, &c.

As to the payment of freight for the conveyance of living animals, whether men or cattle, which may die during the voyage, the following distinction has been taken. If the agreement be to pay freight for lading them, the owners will be entitled to freight notwithstanding their death; but, if for transporting them, then no freight is due for those that die on the voyage. No freight, however, is due for an infant born during the voyage.

Where goods are to be carried at different rates of freight, the proper measure of damage is to estimate the freight by means of one average computation.

Where the freighter puts on board the vessel more goods than his charter-party of affreightment specifies, the freight for the extra goods is to be computed at the rate of payment fixed by the contract or at the usual price for the carriage of such goods.

But where the freighter has the option to load with goods at a higher price, or partly with goods at a lower rate, and partly with goods at the higher price, if, after he has made his election to load with goods at the higher price, he fails to furnish a complete cargo, he is liable to pay the higher freight for the whole cargo.

In general, the chance of the duration of the voyage falls upon the owner of the vessel, unless the freighter stipulates to pay a certain sum for every month, or other portion of the time of the voyage; in which case, the freighter is liable, at the rate of the stipulated freight, for all necessary delays, which may occur by winds and seas, or in harbor for repairs. If no time is fixed for the commencement of the computation, it will begin from the day on which the ship breaks ground, and will continue during the whole course of the voyage, and during all unavoidable delays, not occasioned by hostile capture, or such circumstances as entitle to general average or contribution.

2dly. *When the whole Freight is Due.*—Freight is not due but on the complete performance of the voyage, by the delivery of the goods at the place of destination. And, therefore, if a ship be

captured or lost, no freight can be claimed. But if the vessel be captured in the course of her voyage, without any fault on the part of the owner or master, and re-captured, she will be entitled to freight, if she proceed with her cargo to the place of destination.

Where a ship is freighted for an outward and homeward bound voyage, at one entire sum, no freight is due till the full completion of the homeward voyage. But where the freight of the outward and homeward voyage is distinct, if the vessel should be captured or lost on her homeward voyage freight is due for the outward voyage.

Where a ship is freighted for an outward and a homeward voyage, if the freighter should not be provided with the homeward cargo, the master having waited the demurrage-days, specified in the charter-party, and having made protest of the circumstance, he may take on board a cargo on his own account, and yet the freight will be due for the homeward voyage. But should the master have loaded goods on board on his own account, before the expiration of the days of demurrage, the freighter will be entitled to the value of their carriage, in reduction of the freight for which he is liable on account of the homeward voyage.

Where a vessel is freighted from one port to another, and thence to a third port, and so home to the port from which she sailed, (which are called trading voyages), should she be captured or lost before her return to the port from which she first sailed, no freight will be due.

If part of the cargo be thrown overboard for the preservation of the ship and the remainder of the goods, or if the master is compelled to sell a part of the cargo for victuals or repairs; in these cases, if the ship afterwards reach the place of destination, the owners will be entitled to the value of the freight for the goods so thrown overboard or sold.

Although no freight is due unless a vessel completes her voyage, and delivers her cargo at the port of delivery, yet if advance money has been paid, and described as such in the charter-party, the freighter cannot recover it back, should the ship be lost or captured in her voyage. And on the same principle it has been decided that passage money, paid in advance, is not recoverable in case the vessel be wrecked, or unable to prosecute her voyage.

3dly. *When only part of the Freight is Due.* — Though by the general rule of law, freight is not due, unless the voyage have been completely performed, and the cargo delivered at the port of destination, yet, in certain cases, where the nature of the service is such that a partial performance is a proportion of beneficial service to the freighter, or that the freighter himself, or his agents, or consignee, dispense with the performance of the voyage, and accept the cargo at any other place than that of its destination, the ship-owners will be entitled to an apportionment of freight, or a claim *pro rata itineris peracti*. So, where, by a charter-party, freight is payable at a certain sum per ton, cask, bale, &c., on delivery\* of the cargo, and the delivery of part is prevented by an act of the consignee, or by one of the perils excepted against, freight is due for the part delivered.

Where a freighted ship becomes accidentally disabled on her voyage, or suffers shipwreck, and but part or the whole of the

cargo be saved, it is the duty of the master to provide or offer to provide another vessel, or to refit his own, (if that can be done within a convenient time,) in order to convey such part or the whole of the cargo to its port of delivery; and if the freighter declines to accept such conveyance, he is liable for the whole freight of the full voyage.

Where freight is contracted for monthly, or for any other stated periods, and the ship is lost or captured, the ship-owner is entitled to freight for the number of months which have transpired previous to the loss or capture.

4thly. *When Goods are Deteriorated.*—When goods are deteriorated during the voyage, the merchant is entitled to a compensation, provided the deterioration has proceeded from the fault or neglect of the master or mariners; and of course he is not answerable for the freight, unless he accept the goods, except by way of deduction from the amount of the compensation. On the other hand, if the deterioration has proceeded from a principle of decay naturally inherent in the commodity itself, whether active in every situation, or in the confinement and closeness of a ship, or from the perils of the sea, or the act of God, the merchant must bear the loss and pay the freight; for the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event. In our West India trade, the freight of sugar and molasses is usually regulated by the weight of the casks at the port of delivery here, which, in fact, is in every instance less than the weight at the time of the shipment; and, therefore, the loss of freight occasioned by the leakage necessarily falls upon the owners of the ship by the nature of the contract. Different opinions have been entertained by Valin, Pothier, and other great authorities as to maritime law, with respect to the expediency of allowing the merchant to abandon his goods for freight in the event of their being damaged. This question has not been judicially decided in this country. “The only point,” says Lord Tenderden, “intended to be proposed by me as doubtful, is the right to abandon for freight alone at the port of destination: and in point of practice, I have been informed that this right is never claimed in this country.” Freight being the return made for the conveyance of goods or passengers to a particular destination, no claim arises for its payment in the event of a total loss; and it is laid down by Lord Mansfield, that “in case of a total loss with salvage, the merchant may either take the part saved, or abandon.” But after the merchant has made his election, he must abide by it.—*M<sup>r</sup> Cul. Dict.*, p. 688.

5thly. *The lien for Freight.*—The payment of freight is usually made an express condition of the goods in charter-parties and bills of lading; and of course the ship-owner or master has a right, unless there is an express stipulation to the contrary, to withhold the delivery, until the freight be paid. But though the ship-owner or master has a lien on goods for the freight, yet, if he is doubtful of payment, he should not detain the goods on board the ship, but should land them in some public dock or wharf, and order the dock-keeper or wharfinger not to part with them, until the freighter discharges his demand for freight and other charges.

Where, by the regulations of the revenue, or the operation of the

law, the goods are to be landed and deposited in the public warehouse, until payment of the duties, the master or ship-owner may enter them in his own name, and the lien will thereby be preserved in the place and in the hands where the law has deposited them; and that although he has not given notice to the party in whose hands they are so deposited to retain for his claim.

But no lien can exist unless freight has been earned; and freight cannot have been earned until the goods have been brought to the place of destination, or that performance of the contract of affreightment has been waived by the freighter or his agents. And, therefore, where the freight is prevented from becoming due by any negligence or misconduct of the freighter or his agents, the ship-owner has no lien on the goods, but must seek his remedy in an action for damages.

And where the hull or whole vessel is chartered, the owner of the vessel can have no lien for the stipulated freight on the goods shipped: because the charterer has a co-structive possession of the vessel for the specified voyage, nor will the charterer's temporary property be divested by the payments of the master and crew and by the owner. But if the charter-party contains nothing, either in its language or in its object, which can import that the charterer was to exercise a temporary ownership over the ship, then the ship-owner's right of lien is not divested.

6thly. *By whom Freight is Payable.* — The Consignee, if he accepts the goods, makes himself responsible for the freight, where the bill of lading stipulates for the payment by the consignee; but if he refuse to pay the freight, the master has his remedy over against the shipper.

7thly. *To whom Freight is Payable.* — With respect to the parties entitled to receive freight, it is a general principle of law and equity, that the party with whom the contract is made is the person entitled to it, but in the case of sale of chartered vessels, the vendee of a chartered ship, sold before the commencement of the voyage, is entitled to the freight. Where, however, the ship has been sold during the voyage, the vendor is entitled to the freight. A mortgagee who does not take possession is not entitled to freight.

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#### BOTTOMRY AND RESPONDENTIA.

**BOTTOMRY** is in the nature of a mortgage on a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel, or *bottom* of the ship, as security for repayment. In this contract it is understood, if the ship be lost, the lender loses his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. If the ship and tackle be brought home, they are answerable for the money lent, as well as the *person* of the borrower. But if the loan is not upon the vessel, but upon the goods and merchandize, which must be necessarily sold or exchanged in the course of the voyage then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to raise money on *respondentia*.

In this consists the difference between *bottomry* and *respondentia*; the one is a loan upon the ship, the other a loan upon the goods. In the former case, the lender runs no risk, though the goods should be lost; in the latter, the lender is entitled to principal and interest though the ship be lost, provided the goods are safe. The bottomry and respondentia bonds usually express the nature of the risks to which the lender is liable, and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify. These risks are tempest, fire, capture, and every other casualty, except such as arise either from defects in the ship or merchandize on which the loan is made, or from the misconduct of the borrower.

The respondentia interest is frequently at the rate of 40 or 50 per cent., or in proportion to the risk and profit of the voyage. The respondentia lender may insure his interest in the success of the voyage. [See "*Rights of Seaman*," pp. 87-89.]

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#### DEMURRAGE.

Is a compensation or allowance to be paid by the freighter to the owner of a vessel, in case she is obliged to wait beyond her lay or running days to receive or unload her cargo, either before or after the voyage.

The time allowed for demurrage is generally stipulated in the *charter-party*, or *bill of lading*; but where no time is fixed, but the stipulation is, that the freighter shall be allowed "the usual and customary time," *the period allowed for the lading or discharging of the cargo is regulated according to the custom of the port.*

Where a bill of lading has a note on the margin importing that the goods are to be removed at a certain time, otherwise a certain sum per day is to be charged for delay, whoever claims the goods under the bill becomes responsible for the sum.

But where the revenue laws do not require that the cargo should be deposited in the bonding warehouse, the freighter shall be subject for demurrage for the detention of the vessel beyond the time stipulated in the charter-party, although, on account of the crowded state of the docks, it is impossible for the vessel to get a berth to unload, unless express provision has been made to that effect in the charter-party.

Demurrage is due though the vessel is detained in the port of lading or delivery, by the port regulations or custom-house restraints, or the unlawful seizure of the goods by the custom-house officers, or the want of any necessary papers which it is the duty of the freighter to provide; it being a general rule that the freighter is liable for demurrage for all delays arising in the port, occasioned by any cause whatever, provided that the ship be ready to receive or deliver the cargo. But where the condition of the charter-party is, that the ship shall be *unloaded and discharged within the usual and customary time of ships in the port of delivery and discharge, or within a reasonable time*, the freighter is not liable for any delay which may arise from the ordinary course of business in the port or custom-house in the place of discharge, whether such delay be occasioned either from the crowded state of the port, or

from the routine or ordinary course of business in the bonded warehouse, or the port or custom-house of the place of discharge.

Nor is a freighter discharged from the payment of demurrage, on account that he had no knowledge of the ship's arrival; for neither the master nor broker is bound to give any notice thereof. So, if a ship be chartered to a foreign port, and the freighter covenant to furnish a lading there, a prohibition by the government of the country to export the cargo will not discharge the freighter from his liability for demurrage, unless the captain knew of such prohibition before he entered the port. So a detention rendered inevitable by a physical obstacle, as where a ship was detained in port by being frozen in, is a demurrage for which the freighter is liable.

But demurrage can never be claimed against the freighter while the ship is waiting for convoy, or in the case of capture and recapture, or of the hostile detention of the ship, or the hostile occupation of the port of her destination.

The payment of demurrage stipulated to be made while a ship is waiting to receive a cargo, or for convoy, ceases, in the first case, as soon as the ship is fully laden, and the necessary clearances are obtained; and in the second, as soon as the convoy is ready to depart; although the ship, in either case, happen to be detained by adverse winds or tempestuous weather. And if, after having once set sail on her voyage, she is driven back into port, the claim of demurrage is not thereby revived.

The rate or price of compensation for demurrage is usually stipulated in the charter-party; but where it is not, it may be regulated by the burthen of the ship, or the quantity of the goods she is freighted to carry, or the damage which she is likely to sustain from remaining in the port where she is detained, or the loss sustained by not being able to employ her in another service, or the like, and this is to be ascertained by the opinion of mercantile men, conversant with such subjects.

If a chartered ship is detained beyond her days of demurrage, *prima facie*, the sum payable for those days is also the measure of compensation for the extended time. But it is open to the shipowner to show that more damage has been sustained, and to the freighter that there has been less than would thus be compensated.

By the usage and custom of merchants, the word "days," used alone in a clause of demurrage, mean working-days, and not running days; and working or running days do not comprehend Sundays or Custom-house days.

The freighter is subject for the demurrage of the outward voyage, and the consignee for such as may be occasioned by the detention of the vessel for his benefit. But this, of course, can refer only to cases where there is no charter-party under seal; for no other than the parties to an instrument, or their personal representatives, can be sued upon it.

Freighters under, or holders of bills of lading, are liable for demurrage *pro rata*, that is, in proportion to their share of the cargo

[For further information on the subject of Delivery of Goods see pages 11, 12, 13, 19, 43, 44.]

## FORMS.

*Notice of Abandonment.\** (See page 86.)

To the President, Directors  
and Company of B — n Insurance Co. }

You will please take notice, that I, A. B., of the city of New York, merchant, hereby abandon to you all my right, title, interest, property, and claim in and to the ship — and her cargo; and every part and parcel of them; or either of them: and I demand of you the sum of — dollars, underwritten by you on my interest in said ship and cargo, as for a total loss  
New York, Jan., 1852. A. B.

*Assignment of Insurance.*

KNOW ALL MEN BY THESE PRESENTS, That I, the within named A. B., for and in consideration of the sum of — dollars to me paid by C. D., of —, (the receipt whereof is hereby acknowledged,) do grant, sell, assign, transfer and set over to him, the said C. D., all my right, property, interest, claim and demand, in and to the within named policy of insurance, which have already arisen or which may hereafter arise thereon, with full power to use my name, so far as may be necessary to enable him fully to avail himself of the interest herein assigned.

The conveyance and power herein made, and given, are intended to bind myself and my legal representatives to said C. D., and his legal representatives.

In testimony whereof, I have hereto set my hand, and seal, this — day of —, A. D. eighteen hundred and fifty.

A. B. (L. S.)

*Signed, sealed and delivered in the presence of*

*Assignment of a Sailor's Wages.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of —, for and in consideration of the sum of — dollars, to me paid by C. D., of —, (the receipt whereof is hereby acknowledged,) do grant, sell, assign, and set over to him, the said C. D., all such sum or sums of money as are now due and owing to me, for wages or services on board the ship, or vessel, called the —, from the master or owner of said vessel, on board of which vessel I served as a mariner on her voyage from Liverpool to New York, which has recently terminated. And to enable the said C. D. the better to recover and receive the same, I do hereby appoint him my attorney irrevocable, with full power in my name, but at his charge, to prosecute any and all persons liable therefor, and receive and recover the same, and give discharge therefor.

And I do covenant with the said C. D., that I have not assigned or released the above-named sum or sums of money to any other person or persons whatever, and that I will, at his request, and at his charge, execute to him all and every further conveyance and assurance that may be deemed necessary to enable him fully to avail himself of the benefit of this assignment.

In witness whereof, I have hereunto set my hand, &c., [as above.]

A. B. (L. S.)

*Signed, sealed and delivered in presence of*

\* Though no form be prescribed for this act, yet care should be taken, that it be unconditional, explicit, and on sufficient ground; and, particularly, that the accident occasioning it be described with certainty, so as to enable an under writer to determine whether he be bound to accept. — 1 John. 181.



*Survey of a Ship and Furniture.*

WE A. B. and C. D., ship-masters, and E. F. and G. H., shipwrights, all resident within the — of —, do hereby jointly and severally declare and attest, unto all whom it may concern, that on the — day of —, at the instance of I. K., of, &c., we went on board and alongside the — called the —, of the burthen of — tons or thereabouts, to examine the said —, her hull, masts, yards, anchors, cables, rigging, running rigging and sails, and every other store to her belonging; and having carefully and particularly inspected, examined and surveyed the said — called the —, and her several stores, do report, that the said vessel's hull, masts, &c. are fit, [or unfit,] to proceed to sea; all which we are ready to affirm upon oath, when thereto required.

In witness whereof, we have hereto set our hands, &c.

*Survey of Goods.*

WE whose names are hereunto subscribed have this day, at the instance and request of A. B., master of the — called the —, and bound on a voyage to —, laden with —, duly and carefully surveyed and examined the cargo of the said —, which has been landed and stored in warehouses by order and direction of Mr. C. D., of the said —, under his and the — locks, and who is appointed for and by the said A. B., the master of the said — as aforesaid: We therefore do hereby certify and declare, that on such survey we have carefully examined the whole of the said cargo, and find the same so much damaged, and in a perishable state, as not fit by any means to be reshipped.

Given under our hands this — day of —, in the year of, &c.

*Valuation of a Ship by two Shipwrights.*

WE, the undersigned, A. B. and C. D., shipwrights, residing in B—, do hereby certify and attest, that at the instance and request of E. F., we viewed, inspected, examined, and surveyed the Brig called the Boston, belonging to G. H. of Salem, Mass., together with her tackle, apparel, &c., and do accordingly value and appraise the said ship, with her tackle, apparel, &c., at the sum of —.

In witness whereof we have hereunto set our hands, &c

*Receipt for Seamen's Wages.*

RECEIVED of Captain —, master of the ship —, of —, the sum of —, in full for wages, and in satisfaction of all other claims and demands whatsoever, on the said captain and owners, during the time of my service on board the same ship, (or any other ship belonging to the same owners.) Witness my hand at —, this — day of —, 18—. A. B.

Witness, C. D.

§—

*Letter of Attorney from a Sailor to his Wife to receive his Wages, &c.*

I, A. B., of, &c., mariner, do constitute and appoint my loving wife, C. D., my true and lawful attorney, for me, and in my name, and for my use, to ask for, demand and receive, of and from all and every person and persons whatsoever, as well all such sum and sums of money as now are, or which shall or may at any time hereafter become due and owing to me for wages, from any ship or ships to which I now do or may belong; as also all and other moneys now due, or to become due and owing to me by

any other ways or means whatsoever; and upon non-payment either of the whole or of any part of the said pay, or other demands, I do hereby authorize and empower my said wife to bring a suit or suits in law, in my name, for the recovery thereof.

In witness whereof, I have hereunto set my hand and seal this — day of —, 1850—.

A. B. (L. S.)

*Signed, sealed and delivered in presence of*

### *Adjustment of General Average. (See Page 74.)*

| <i>Amount of Losses.</i>                                                                                              |         | <i>Value of articles to contribute.</i>                     |        |
|-----------------------------------------------------------------------------------------------------------------------|---------|-------------------------------------------------------------|--------|
| Goods of A. cast overboard, -                                                                                         | \$500   | Goods of A. cast overboard, -                               | \$500  |
| Damage of the goods of B. by the jettison, - - - -                                                                    | 200     | Sound value of goods of B. deducting freight and charges, - | 1,000  |
| Freight of the goods cast overboard, - - - - -                                                                        | 100     | Goods of C. - - - -                                         | 500    |
| Price of a new cable, anchor, and mast, - - - -                                                                       | \$300   | Of D. - - - - -                                             | 2,000  |
| Deduct one third, - - -                                                                                               | 100     | Of E. - - - - -                                             | 5,000  |
|                                                                                                                       | 200     | Value of the ship, -                                        | 2,000  |
| Expenses of bringing the ship off the sands, - - - -                                                                  | 50      | Clear freight, deducting wages, victuals, &c. - - - -       | 800    |
| Pilotage and port duties, going into the harbor and out, and commission to the agent, who made the disbursements, - - | 100     | Total of contributory value,                                | 11,800 |
| Expenses there, - - -                                                                                                 | 25      |                                                             |        |
| Adjusting this average, -                                                                                             | 4       |                                                             |        |
| Postage, - - - -                                                                                                      | 1       |                                                             |        |
| Total of losses, - - -                                                                                                | \$1,180 |                                                             |        |

Then \$11,800 : 1,180 :: 100 : 10.

That is, each person will lose 10 per cent. upon the value of his interest in the cargo, ship, or freight. Therefore

|                    |     |                     |     |
|--------------------|-----|---------------------|-----|
| A. loses - - - - - | 50  | D. - - - - -        | 200 |
| B. - - - - -       | 100 | E. - - - - -        | 500 |
| C. - - - - -       | 50  | The owners, - - - - | 280 |

Total 1,180 which is the exact amount of losses.

Upon this calculation, the owners are to lose \$280, but they are to receive from the contribution \$ 80 to make good their disbursements, and \$100 more for the freight of the goods thrown overboard, or \$480, less \$280.

|                                                                          |       |
|--------------------------------------------------------------------------|-------|
| They therefore are actually to receive, - - - - -                        | \$200 |
| A. is to contribute \$50, but has lost \$500 therefore is to receive, -  | 450   |
| B. is to contribute \$100, but has lost \$200; therefore is to receive - | 100   |

Total to be actually received, - - - - - 750  
On the other hand, C. D, and E. have lost nothing, and are to pay as before, viz :

|              |       |
|--------------|-------|
| C. - - - - - | \$ 50 |
| D. - - - - - | 200   |
| E. - - - - - | 500   |

Total to be actually paid, - - - - - \$750

which is exactly equal to the total to be actually received, and must be paid by, and to, each person in rateable proportion.

## CHARTER - PARTY.

[From the Mercantile and Maritime Guide, London Ed., 1856]

There is nothing to prevent this contract from being verbal, but in practice it is always reduced to writing, and the written instrument containing the terms of it is called a *charter-party*. It may be under seal or not.

The words *or thereabouts* are generally understood to mean about five tons; but in one case, where a ship was described as of the burthen of 261 tons or thereabouts, and the freighter undertook to find a full cargo, and no fraud was imputable to the owner, the freighter was held bound to find an actual full cargo, though the ship carried 400 tons.

Goods may be packed according to the custom of the loading port, and so may form a full cargo, although it may be possible to pack them in less compass. Thus, sugar may be packed in hogsheads, if such is the custom, though it would take less room in tierces.

A charter-party being an agreement drawn up at the discretion of the parties, they may of course introduce any terms they agree upon.

The ship and freight and cargo are often bound in a penalty by the owners or master and the freighters respectively, for the performance of their undertakings. But these clauses seem to be of no utility; for in an action for the failure of the undertakings, the plaintiff would recover to the amount of the injuries he had suffered, and in no case, whatever penalty might be introduced, could he recover more.

*Form of a Charter Party, Inwards.*

LONDON, 5th JUNE, 1856.

It is this day mutually agreed between *Mr. A. Gordon*, owner of the good Ship or Vessel called the *William*, whereof *J. Robinson* is now Master, of 223 Tons, or thereabouts, Register Measurement, now on her passage from London to Malta, and Messrs. *Bovet & Co.* of London, Merchants.

That the said Ship, being tight, staunch, and strong, and every way fitted for the Voyage, shall, with all convenient speed, after discharging her cargo of coals at Malta, sail and proceed to CONSTANTINOPIE, and thence, as there ordered, to ODESSA, or KERTCH, or so near thereunto as she may safely get, and there load from the Factors of the said Merchant, a full and complete Cargo of Tallow, Wood, Wheat, Seed, or other Stowage Goods or Grain, at the option of the Freighters, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions, and Furniture; and being so loaded, shall therewith proceed to FALMOUTH or CORK, at the Master's option, for orders to discharge, at a SAFE PORT in the UNITED KINGDOM, HOLLAND or BELGIUM, or so near thereunto as she may safely get, upon being paid Freight as follows

| From ODESSA, or KERTCH.              | To the United Kingdom. |   |   | To Holland or Belgium. |    |   |                                                                              |
|--------------------------------------|------------------------|---|---|------------------------|----|---|------------------------------------------------------------------------------|
|                                      | £                      | s | d | £                      | s  | d |                                                                              |
| For Tallow,.....                     | 3                      | 0 | 0 | 3                      | 10 | 0 | } Per Ton 20 cwt. gross<br>Per Load of 20 cubic ft.<br>Per Imperial quarter. |
| For Wool,.....                       |                        |   |   |                        |    |   |                                                                              |
| For Flax and Hemp of all sorts,..... |                        |   |   |                        |    |   |                                                                              |
| For Wainscot Logs,.....              |                        |   |   |                        |    |   |                                                                              |
| For Wheat,.....                      |                        |   |   |                        |    |   |                                                                              |

Should the Vessel be ordered to Kertch, the Charterers to have the option of sending her to a port in the Sea of Azof to load, on paying ten shillings per ton additional freight.

The Freighters to have the liberty of shipping ——— staves as broken stowage only, at £22 per Standard Mille.

Other Stowage Goods, Seed or Grain, if any, in the customary proportion, according to the London Baltic printed rates; being in full of all Port-charges, and Pilotage, as customary. The Freighter engages to provide the necessary Mats for Dunnage. One-half the Freight to be paid Cash on unloading and right delivery of the Cargo, and the remainder by approved Bill at Three Months following, or in Cash at the Freighter's option, deducting the usual interest. (The Act of God, the Queen's Enemies, Fire and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever Nature and Kind soever, during the said Voyage, always excepted.) Cash for Ship's use to be advanced to the Master at the Port of Loading, by the Freighter's Agents, free on Commission, against his Draft for the same on the Owners or Brokers if LONDON. Twenty running days are to be allowed the said Merchant (if the ship is not sooner despatched) for loading and unloading; and Ten Days on demurrage over and above the said lying days, at Four Pounds per day. Detention by Frost or Quarantine not to be reckoned as lay days.

It is further agreed, That on the Ship's arrival at ODESSA, or KERTCH, the Freighter's Agents shall have the option of employing her for One intermediate Voyage in the Mediterranean, paying two-thirds of the above Freight if the Ship discharge at a Port in ITALY or AUSTRIA, and three-fifths thereof if she should discharge at a Port in FRANCE, thirty running days to be allowed for loading and unloading. Such Freight to be paid in Cash at the Port of delivery, or by approved Bills at usance on LONDON. If loaded for a French Port, the Captain is to call at Malta, and take fresh Clearances and Bills of Lading from the Shipper's Agents, who are to pay the Ship's Port Dues. Penalty for Non-performance of this agreement Eight Hundred Pounds.

*The Freighter to be allowed to discharge the Ship in one of the Docks in the RIVER THAMES, upon paying two-thirds of the Dues. The Ship is to be addressed to Messrs Dick on & Co., ODESSA, or to their Agents at the other Ports; and to the Freighter's Agents, if ordered to discharge at any Outport in the United Kingdom, Holland, or Belgium.*

*Two additional lay days are to be allowed, if one-third or more of the cargo should consist of Wool.*

Witness to both the signatures,  
J. JONES.

(Signed) A. GORDON.  
BOVET & Co.

In a charter-party on a voyage out and home, where running days are allowed for "loading, discharging, and reloading," these words do not apply to the discharging of the homeward cargo in the United Kingdom, and the owner is not entitled to demurrage for a reasonable time occupied in discharging the cargo in the London docks. The great variety of circumstances occasioned by different voyages naturally produces a correspondent diversity in the clauses of charter-parties. The general conditions of such documents, for commercial purposes, seldom, however, materially vary from the above, and the *Form of a Charter-party, Outwards*.

## SHIP'S PROTEST.

### *Protests relating to various Mercantile Subjects.*

On the arrival of a vessel at her port of destination, it is the custom for the master to cause an entry or note of a protest to be made, which is signed by him at the office of a notary.

It should contain some particulars of the voyage, such as the name of the vessel, and of the master, the port whence she came, the time of her departure, the nature of her cargo, and the date of her arrival. This ceremony is called noting a protest, or entering a note of a protest; and should be done within twenty-four hours after arrival.

The same ceremony is also performed by a master of a vessel after any extraordinary accident or injury, if the vessel should be obliged to put into a port other than that of her destination, or to return to the port whence she sailed.

Ship protests are useful and important documents, for various purposes, and especially in matters connected with the adjustment of losses, in marine insurance, and for reference on the calculation of general averages, and ought to be prepared with attention, care, and impartiality.

Whenever it happens, either from the ship or cargo being lost or injured, or any other circumstance, that it becomes necessary to have a regular protest made, or extended, the course to be pursued, is to cause it to be prepared by a notary, from the information as to the facts, to be derived from one or more of the crew, or from the Log Book, and for the master and others of the crew, (generally the master, mate, and two or more seamen,) within a reasonable time after arrival, to sign and make oath to it before the notary; and it is not material to have it so extended before the same notary in whose office it was noted.

There is not any precise form generally adopted for a ship protest, and in fact the mode in which it is drawn up, varies exceedingly; it generally consists of two parts, the first is a statement or declaration of the facts and circumstances of the voyage, and of the storms or bad weather which the vessel may have encountered, or any accidents which may have occurred, during the course of it; and the other is the part in which the appearers or the notary, or both the appearers and the notary, protest, against the accidents, or causes of the injury, and against all loss or damage occasioned thereby, and at the end or foot is an attestation or certificate under the hand and seal of the notary.

The protesting part is too often spun out to an unnecessary and absurd length; it is a mere form, and a few words are sufficient.

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### *Entry or note of a Protest of a Ship (common form).*

Notary and Entry of Ship Mary.

On this — day of —, in the year one thousand eight hundred and —, personally appeared and presented himself at the office of R. B., Notary Public, C. D. master of the ship or vessel, the Mary, which sailed on a voyage from L. on the — day of — last, and arrived at G. on the — of — instant, laden with a cargo of —. And the said master hereby gives notice of his intention of protesting, and causes this note or minute, of all and singular the premises, to be entered in this register.

C. D.

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*Ship Protest, (common form) in consequence of loss or damage by Storms and Tempestuous Weather, and also by Jettison.*

UNITED STATES OF AMERICA.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss. City of Boston.

*By this Public Instrument of Protest, be it known and made manifest to all whom it doth or may concern,—That on this — day of —, in the year of our Lord one thousand eight hundred and fifty—, before me, J. R. B., a Notary Public, duly commissioned and sworn, in and for the County aforesaid, personally came and appeared A. B., master of the —, belonging to the port of —, of the burthen of — hundred tons or thereabouts; and with him also came C. D. mate, and E. F. and G. H., seamen of and belonging to said —, who, being severally sworn, did declare and depose, that the said —, being laden with a cargo of —,*

they the said appearers, made sail and departed in and with the said —, from the port of —, bound to —, on the — day of —, in the year one thousand eight hundred and fifty—.

That they proceeded on their voyage with fine weather and variable winds, accompanied occasionally with rain, until the — day of —, when they had fresh gales from the south-west, and passing squalls, and a heavy sea running, and they shipped large quantities of water on deck and over all parts of the ship, the vessel plunging her bowsprit end under water; at noon being in latitude 14 degrees 22 minutes north, longitude 88 degrees 13 minutes east, they had [*continue the general narrative, or statement of facts, in relation to the disaster, with a particular account of the several losses and injuries sustained, with the causes thereof fully and particularly set forth.*]—And they were obliged, in order to lighten the ship, and for the safety and preservation of the vessel, crew, and rest of the cargo, to throw overboard a portion of the cargo, consisting of (*here describe the goods or articles voluntarily thrown overboard for the common benefit of all concerned*) which was accordingly done.—That they continued on their voyage generally with strong squalls and fresh gales, until the 1st of —; at ten a. m. the — light bore east north-east, distant three leagues; at two p. m. took a pilot on board; at six a. m. they got safely moored in the harbor of —.

That on the — day of —, the said first named deponent having arrived at —, did, within twenty-four hours thereafter, note for protest before J. R. B., to be extended, if occasion should require.

And the said appearers, did further severally declare that the said —, at the time of her departure from — as aforesaid, was tight, staunch, and strong; had her hatches well and sufficiently caulked and covered; was well and sufficiently manned, provided, and furnished with all things needful and necessary for said voyage; and that during the said voyage the said appearers and the residue of the crew used their utmost endeavors to preserve the said — and her cargo from damage.

And therefore the said A. B. did declare to protest, and by these presents he doth solemnly protest against all and every person or persons whomsoever it doth or may concern; and doth declare that all damages, losses, and detriments that have happened to the said — and her cargo, are, and of right ought to be, borne by the merchants and freighters interested, or their respective underwriters, or whomsoever else it doth or may concern, by way of average or otherwise, the same having occurred as before set forth, and not by or through the insufficiency of the vessel, the neglect of him the said appearer, or either of the mariners belonging to said vessel.

In witness whereof, the said appearers have hereunto subscribed their names, in presence of me the said notary.

A. B.  
C. D.  
E. F.  
G. H.

All which matters and things, were declared, alleged, and affirmed before me the said notary. *In testimony whereof*, I have hereunto set my hand and affixed my official seal.  
(Seal.)

J. R. B. Notary Public.

### *Protest in consequence of a Loss by Collision.*

*By this Public Instrument, &c., (similar to ship protest.)*

That at about half past two, a. m. on the 2nd of February, whilst the vessel was proceeding on her said intended voyage, the other appearer, the said C. D. being below in bed, and the said vessel being between the Great O. and Point L., the wind being about east south-east, with moderate weather and smooth water, the vessel running before the wind and

steering west north-west, under all sail, with a square sail and half topsail set; and this appearer A. B. being then at the helm, and this appearer, the said E. F. being forward, he called out that he saw a light on the starboard bow, and they at first thought it was Point L. light, but it afterwards turned out to be the light of the steamer Etna. That this appearer, the said E. F. immediately went below for a light and brought a lanthorn on deck, and showed the light over the starboard bow, and this appearer, the said A. B. put the helm of the Anne Mary to starboard until the course was altered, from west north-west to south-west, in order to avoid the steamer. That after so altering their course, this appearer, the said E. F. shifted the light from the bow to abaft the rigging on the starboard side, to make it better seen by the crew on board the steamer, and both these appearers, the said A. B. and E. F. called out to the steamer to starboard her helm, and in about five minutes after the light was shown, the steamer struck the Anne Mary, and she went down in a few minutes afterwards. And this appearer, the said C. D. for himself declares, and says that he was below in bed, and was awoke by the said A. B. calling out "steamer ahoy," and immediately ran upon deck in his shirt and drawers, and saw the appearer, the said E. F. holding a lanthorn on the starboard quarter, and this appearer, the said C. D. had not been a minute on deck, before the steamer struck the Anne Mary. And these appearers, the said A. B., C. D., E. F. and G. H. for themselves declare and say, that immediately after the said C. D. came on deck, the steamer struck the Anne Mary nearly a-midships, and for the preservation of their lives, these appearers, and another of the crew of the Anne Mary, jumped on board the steamer, and arrived back at L. in her, on the 2nd of February; and on the same day this appearer, the said A. B. appeared at the office of me, the said notary, and caused his protest to be duly noted. And these appearers do protest, and I, the said notary do also protest, against the said steamer, and the said collision, striking, facts, occurrences, and all loss or damage occasioned thereby.

[Signed and sealed as in ship protest.]

### Notarial Certified Copy of a Ship's Protest.

To all to whom these presents shall come, I, R. B. Notary Public, duly commissioned and sworn, residing in B— in the county of S—, in the State of —, do hereby certify, that the paper writing hereunto annexed, purporting to be a copy of a protest of the master and part of the crew therein named, of the ship or vessel the Anne, bearing date the — day of — last, is a true and correct copy of the said protest, the same having been carefully examined and compared with the original protest, which was made and declared before me [or before C. D. of — aforesaid, notary public.] [or, as the case may be, examined and compared with the original draft of the said protest, drawn up, and registered in my office, and which protest was duly made and declared before me, the said notary.]

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this — day of —, one thousand eight hundred and fifty—.

(Seal.)

R. B. Notary Public.

*Protest by Shippers of Goods against the Master and Owners of a Vessel, in consequence of the Master's refusal, after notice, to sign a Bill of Lading in the customary form.*

*By this Public Instrument of Protest, be it known and made manifest unto all people, that on the — day of —, in the year one thousand*

## 110 PROTEST FOR REFUSING TO SIGN BILL OF LADING.

eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned and sworn, residing in B—, in the county of S—, in the State of M—, G. G. one of the firm of G. G. and Company, of B—, merchants, the shippers of goods and merchandise, per the — day of — instant, bound on a voyage from B— to C—, and C. D. of B—, clerk to the said G. G. and Company, who being severally sworn, did declare and depose; and first this appearer, the said C. D. for himself, did declare and state as follows; that is to say, that this appearer did attend for the said G. G. and Company, the shippers, and did conduct the delivery on the — day of — instant, at and alongside of the said —, of the goods and merchandise, mentioned in the duplicate (or copy) bill of lading after mentioned? That E. F. the master of the said ship or vessel, signed and gave a bill of lading for the seven chests of merchandise therein mentioned, with the words, "one chest in dispute, if on board to be delivered, contents unknown," written at the foot thereof, and that the said G. G. and Company objected to the same; and that this appearer, the said C. D. was present, and did see the said seven chests of merchandise carefully delivered, at and alongside the said vessel, at L— aforesaid, in the usual manner, and left under the charge of the mate and crew thereof; and that on this — day of — instant, this appearer, the said C. D. did deliver to the said E. F. a notice and demand, signed by the said G. G. and Company, of which a copy is hereto annexed, but the said E. F. refused to comply therewith, or to sign or deliver any other bill of lading, in another form.

And the appearer, the said G. G. for and on behalf of himself and of his said co-partner in trade, under the said firm of G. G. and Company, and for and on behalf of all other persons who are, or shall or may be interested in the said goods and merchandise, doth declare and protest before me, and I. the said notary, at the request of the said shippers, the said G. G. and Company, do protest against the owners and the said master of the said vessel, for and in respect of the said refusal and neglect to sign and give a correct bill of lading, for the said goods, in the usual and customary form, and for and in respect of all fall of markets, loss, damage, or expenses, which the said shippers, or any other person or persons, who is, or are, or shall, or may be interested therein, have or hath incurred, or may incur, by reason of the premises.

(Signed and sealed as in Ship Protest.)

*Copy of the Notice to the Master referred to in the foregoing Protest, objecting to the qualification introduced into the Bill of Lading, without consent, and demanding a Bill of Lading in the customary form.*

To Captain E. F. Master of the ship or vessel called the Frances.

WE, the shippers of seven chests of merchandise, on board the Frances, for C—, hereby give you notice, that we object to the qualification or exception of "one chest in dispute, if on board to be delivered, contents unknown," added without our consent to the bill of lading, signed by you for the said goods, for C—, and that we hold you and the owners of the vessel, responsible for the value and safety of all and every goods, which we shall prove to have been delivered at the said vessel: and we demand and require you, forthwith to sign and deliver to us a bill of lading for the said goods, in a usual, legal, and customary form, and we give you notice, that in default thereof, we protest against you, and we hold you and the owners of the vessel responsible for all loss, damage, or expenses, by reason of the premises.

G. G. and Co.

B—, — day of —, 185—



*Protest, by Merchants, against the Master and Owners, in consequence of the master not proceeding to Sea after signing Bills of Lading.*

*By this Public Instrument of Protest*, be it known and made manifest unto all people, that on the — day of —, in the year one thousand eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned, and sworn, residing in L—, in the county of L—, in the State of —, A. B. of L— aforesaid, merchant, one of the partners composing the firm of A. B. and Company, who being sworn, did declare and depose as follows; that is to say, that this appearer and his co-partner, under their said firm of A. B. and Company, did, on the — day of — last, ship on board the ship or vessel called the Victoria, G. H. master, at L— then bound on a voyage from L— to (*here state the destination, and describe the goods.*) and that the said G. H. the master of the said ship, signed the usual bills of lading for the said goods and merchandise, part expressed to be deliverable to order, and the other part to Messrs. —, of — aforesaid; and that soon after this appearer's said firm shipped the said goods on board the said vessel she was ready for sea, and that the wind was fair, and she might have proceeded on her said voyage on or about the — day of — last, and that vessels bound to the same port, as the said vessel, have sailed since she was ready for sea, but that she has not done so, although this appearer has repeatedly given notice to, and required the said master, to set sail, and proceed with the said vessel, and the said goods, on board, on her said intended voyage to —, but that she is still lying and remaining in the port of L—. Wherefore, the said appearer, A. B. on behalf of himself and his said firm, and for and on behalf of all other persons who are, or shall, or may be interested in the said goods, doth protest; and I, the said notary, at his request, do protest against the said master, the crew, and the owner or owners of the said vessel, for all negligence, inattention, and delay, and all fall of market, loss, damage, and expenses, which the said appearer or his said firm, or the owners or consignees of the said cargo or goods, may sustain, or be put unto, in consequence of such delay, matters, and circumstances as aforesaid. A. B.

Thus protested in due form, at L— aforesaid, the day and year first before written; before me,

(Seal.)

R. B. Notary Public.

*Protest by the Master of a Vessel, against the Consignees of Goods, for not discharging and taking them from the Vessel in a reasonable time.*

*By this Public Instrument of Protest*, be it known and made manifest unto all people, that on the — day of —, in the year one thousand eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned and sworn, residing in L—, in the county of L—, in the State of —, A. B. master of the ship or vessel, the Tom, belonging to the port of —, who being sworn, did declare and depose as follows: that is to say, that this appearer did, on or about the — day of — last, receive on board the said vessel, at the port of L—, in the — of —. [*here describe the goods.*] all of which were shipped on board her there by E. F. addressed to C. D. at L— aforesaid; and this appearer duly signed bills of lading as customary, expressing the said goods to be deliverable to the said C. D. at L—, he or they paying freight for the same, with primage accustomed. That this appearer proceeded with the said goods on board the said vessel direct to L— aforesaid, where she arrived on the — day of — instant, and on the — day of

— instant, when the said vessel had been reported, and had got into a proper berth for discharging, this appearer gave notice to the said C. D. to whom the said goods were addressed, that this appearer was ready to deliver the said goods; but from that time up to the date and making of these presents, neither the said C. D. nor any other person on his behalf, hath received or discharged, or offered to receive or discharge the said goods from the said vessel, or paid or offered to pay the freight and primeage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to, and requested the said C. D. to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable, and injurious to the interests of the owners and master of the said vessel. Wherefore, the said appearer, A. B. on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest, and I, the said notary, at his request, do also protest against the said C. D. and against all and every other person or persons whomsoever responsible, or whom these presents do or may concern, and holding him or them responsible for all demurrage, loss, damage, wages, and expenses incurred, owing, or sustained, or to be incurred or sustained, in consequence of such unreasonable delay, detention, and circumstances as aforesaid. A. B.

All which matters and things were declared, alleged, and affirmed before me the said Notary. *In testimony whereof*, I have hereunto set my hand and affixed my official seal.

(Seal.)

R. B. Notary Public.

### FORM OF BILL OF LADING.

SHIPPED in good order and condition, by A. B. on board the —, called the —, whereof C. D. is master for this present voyage, now lying in the port of —, and bound for —: To say: twenty packages, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of —, (the act of God, enemies, fire, machinery, boiler, steam and all and every other dangers and accidents of seas, lakes, rivers, and steam navigation of whatever nature and kind soever excepted) unto R. H. or his assigns, he or they paying freight for the same, the sum of —.

In witness whereof the Master or Clerk of said —, hath affirmed to — Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void. Dated at —, the 1st day of July, 185—. C. D.

A master can demand to see the contents of a case, &c., if he suspects that there is any damage, or that it contains any unlawful or dangerous article, as gunpowder, &c.; and to prevent dispute, it is usual to write upon the bills of lading such words as will show that the captain, or person signing them, has no other knowledge of what the goods are, than that which is obtained from their external appearance. As

(If Iron, &c.)

*Weight unknown to*

(If bales of Hemp, Flax, and other packages, &c.)

*Contents unknown to, or Weight and contents unknown to*

(For a number of pieces in bales of manufactured goods.)

*Number of pieces and contents unknown to*

(For liquids.)

*Contents unknown to, and Not accountable for leakage.*

(If liquids in bottles)

*Contents unknown to, and Not accountable for leakage and breakage.*

(If the number of gallons are expressed in the bill.)

*Number of gallons and contents unknown to, and Not accountable for leakage.*

THOMAS SMITH.

TABLE FOR CALCULATING SEAMEN'S &amp; BOATMEN'S WAGES, FROM 5 TO 17 DOLLARS PER MONTH.

| No. of Days. | SEAMEN'S WAGES BY THE DAY AND MONTH. |           |           |           |           |           |           |           |           |           |           |           |           |           |
|--------------|--------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|              | mo.<br>\$                            | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ |
|              | 5-00                                 | 6-00      | 7-00      | 8-00      | 9-00      | 10-00     | 11-00     | 12-00     | 13-00     | 14-00     | 15-00     | 16-00     | 17-00     |           |
| 1            | 0-17                                 | 0-20      | 0-23      | 0-27      | 0-30      | 0-33      | 0-37      | 0-40      | 0-43      | 0-47      | 0-50      | 0-53      | 0-57      |           |
| 2            | 0-33                                 | 0-40      | 0-47      | 0-53      | 0-60      | 0-67      | 0-73      | 0-80      | 0-87      | 0-93      | 1-00      | 1-07      | 1-13      |           |
| 3            | 0-50                                 | 0-60      | 0-70      | 0-80      | 0-90      | 1-00      | 1-10      | 1-20      | 1-30      | 1-40      | 1-50      | 1-60      | 1-70      |           |
| 4            | 0-67                                 | 0-80      | 0-93      | 1-07      | 1-20      | 1-33      | 1-47      | 1-60      | 1-73      | 1-87      | 2-00      | 2-13      | 2-27      |           |
| 5            | 0-83                                 | 1-00      | 1-17      | 1-33      | 1-50      | 1-67      | 1-83      | 2-00      | 2-17      | 2-33      | 2-50      | 2-67      | 2-83      |           |
| 6            | 1-00                                 | 1-20      | 1-40      | 1-60      | 1-80      | 2-00      | 2-20      | 2-40      | 2-60      | 2-80      | 3-00      | 3-20      | 3-40      |           |
| 7            | 1-17                                 | 1-40      | 1-63      | 1-87      | 2-10      | 2-33      | 2-57      | 2-80      | 3-03      | 3-27      | 3-50      | 3-73      | 3-97      |           |
| 8            | 1-33                                 | 1-60      | 1-87      | 2-13      | 2-40      | 2-67      | 2-93      | 3-20      | 3-47      | 3-73      | 4-00      | 4-27      | 4-53      |           |
| 9            | 1-50                                 | 1-80      | 2-10      | 2-40      | 2-70      | 3-00      | 3-30      | 3-60      | 3-90      | 4-20      | 4-50      | 4-80      | 5-10      |           |
| 10           | 1-67                                 | 2-00      | 2-33      | 2-67      | 3-00      | 3-33      | 3-67      | 4-00      | 4-33      | 4-67      | 5-00      | 5-33      | 5-67      |           |
| 11           | 1-83                                 | 2-20      | 2-57      | 2-93      | 3-30      | 3-67      | 4-03      | 4-40      | 4-77      | 5-13      | 5-50      | 5-87      | 6-23      |           |
| 12           | 2-00                                 | 2-40      | 2-80      | 3-20      | 3-60      | 4-00      | 4-40      | 4-80      | 5-20      | 5-60      | 6-00      | 6-40      | 6-80      |           |
| 13           | 2-17                                 | 2-60      | 3-03      | 3-47      | 3-90      | 4-33      | 4-77      | 5-20      | 5-63      | 6-07      | 6-50      | 6-93      | 7-37      |           |
| 14           | 2-33                                 | 2-80      | 3-27      | 3-73      | 4-20      | 4-67      | 5-13      | 5-60      | 6-07      | 6-53      | 7-00      | 7-47      | 7-93      |           |
| 15           | 2-50                                 | 3-00      | 3-50      | 4-00      | 4-50      | 5-00      | 5-50      | 6-00      | 6-50      | 7-00      | 7-50      | 8-00      | 8-50      |           |
| 16           | 2-67                                 | 3-20      | 3-73      | 4-27      | 4-80      | 5-33      | 5-87      | 6-40      | 6-93      | 7-47      | 8-00      | 8-53      | 9-07      |           |
| 17           | 2-83                                 | 3-40      | 3-97      | 4-53      | 5-10      | 5-67      | 6-23      | 6-80      | 7-37      | 7-93      | 8-50      | 9-07      | 9-63      |           |
| 18           | 3-00                                 | 3-60      | 4-20      | 4-80      | 5-40      | 6-00      | 6-60      | 7-20      | 7-80      | 8-40      | 9-00      | 9-60      | 10-20     |           |
| 19           | 3-17                                 | 3-80      | 4-43      | 5-07      | 5-70      | 6-33      | 6-97      | 7-60      | 8-23      | 8-87      | 9-50      | 10-13     | 10-77     |           |
| 20           | 3-33                                 | 4-00      | 4-67      | 5-33      | 6-00      | 6-67      | 7-33      | 8-00      | 8-67      | 9-33      | 10-00     | 10-67     | 11-33     |           |
| 21           | 3-50                                 | 4-20      | 4-90      | 5-60      | 6-30      | 7-00      | 7-70      | 8-40      | 9-10      | 9-80      | 10-50     | 11-20     | 11-90     |           |
| 22           | 3-67                                 | 4-40      | 5-13      | 5-87      | 6-60      | 7-33      | 8-07      | 8-80      | 9-53      | 10-27     | 11-00     | 11-73     | 12-47     |           |
| 23           | 3-83                                 | 4-60      | 5-37      | 6-13      | 6-90      | 7-67      | 8-43      | 9-20      | 9-97      | 10-73     | 11-50     | 12-27     | 13-03     |           |
| 24           | 4-00                                 | 4-80      | 5-60      | 6-40      | 7-20      | 8-00      | 8-80      | 9-60      | 10-40     | 11-20     | 12-00     | 12-80     | 13-60     |           |
| 25           | 4-17                                 | 5-00      | 5-83      | 6-67      | 7-50      | 8-33      | 9-17      | 10-00     | 10-83     | 11-67     | 12-50     | 13-33     | 14-17     |           |
| 26           | 4-33                                 | 5-20      | 6-07      | 6-93      | 7-80      | 8-67      | 9-53      | 10-40     | 11-27     | 12-13     | 13-00     | 13-87     | 14-73     |           |
| 27           | 4-50                                 | 5-40      | 6-30      | 7-20      | 8-10      | 9-00      | 9-90      | 10-80     | 11-70     | 12-60     | 13-50     | 14-40     | 15-30     |           |
| 28           | 4-67                                 | 5-60      | 6-53      | 7-47      | 8-40      | 9-33      | 10-27     | 11-20     | 12-13     | 13-07     | 14-00     | 14-93     | 15-87     |           |
| 29           | 4-83                                 | 5-80      | 6-77      | 7-73      | 8-70      | 9-67      | 10-63     | 11-60     | 12-57     | 13-53     | 14-50     | 15-47     | 16-43     |           |
| 30           | 5-00                                 | 6-00      | 7-00      | 8-00      | 9-00      | 10-00     | 11-00     | 12-00     | 13-00     | 14-00     | 15-00     | 16-00     | 17-00     |           |
| 1            | 0-04                                 | 0-05      | 0-06      | 0-07      | 0-08      | 0-08      | 0-09      | 0-10      | 0-11      | 0-12      | 0-13      | 0-13      | 0-14      |           |
| 1            | 0-08                                 | 0-10      | 0-12      | 0-13      | 0-15      | 0-17      | 0-18      | 0-20      | 0-22      | 0-23      | 0-25      | 0-27      | 0-28      |           |
| 1            | 0-12                                 | 0-15      | 0-17      | 0-20      | 0-23      | 0-25      | 0-27      | 0-30      | 0-32      | 0-35      | 0-38      | 0-40      | 0-42      |           |

N. B. It is the practice in business, in casting accounts, whenever there is a half cent, to take one cent; for a fraction less than half cent, nothing is taken.

Seamen are entitled to demand and receive from the master, one third part of the wages which shall be due them, at every port where the vessel unloads and delivers her cargo before the voyage is ended; unless the contrary is stipulated in the Shipping Articles.

## SEAMEN'S AND BOATMEN'S WAGES, — CONTINUED.

| No. of Days. | SEAMEN'S WAGES BY THE DAY AND MONTH. |           |           |           |           |           |           |           |           |           |           |           |           |
|--------------|--------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|              | mo.<br>\$                            | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ | mo.<br>\$ |
|              | 18-00                                | 19-00     | 20-00     | 21-00     | 22-00     | 23-00     | 24-00     | 25-00     | 26-00     | 27-00     | 28-00     | 29-00     | 30-00     |
| 1            | 0-60                                 | 0-63      | 0-67      | 0-70      | 0-73      | 0-77      | 0-80      | 0-83      | 0-87      | 0-90      | 0-93      | 0-97      | 1-00      |
| 2            | 1-20                                 | 1-27      | 1-33      | 1-40      | 1-47      | 1-53      | 1-60      | 1-67      | 1-73      | 1-80      | 1-87      | 1-93      | 2-00      |
| 3            | 1-80                                 | 1-90      | 2-00      | 2-10      | 2-20      | 2-30      | 2-40      | 2-50      | 2-60      | 2-70      | 2-80      | 2-90      | 3-00      |
| 4            | 2-40                                 | 2-53      | 2-67      | 2-80      | 2-93      | 3-07      | 3-20      | 3-33      | 3-47      | 3-60      | 3-73      | 3-87      | 4-00      |
| 5            | 3-00                                 | 3-17      | 3-33      | 3-50      | 3-67      | 3-83      | 4-00      | 4-17      | 4-33      | 4-50      | 4-67      | 4-83      | 5-00      |
| 6            | 3-60                                 | 3-80      | 4-00      | 4-20      | 4-40      | 4-60      | 4-80      | 5-00      | 5-20      | 5-40      | 5-60      | 5-80      | 6-00      |
| 7            | 4-20                                 | 4-43      | 4-67      | 4-90      | 5-13      | 5-37      | 5-60      | 5-83      | 6-07      | 6-30      | 6-53      | 6-77      | 7-00      |
| 8            | 4-80                                 | 5-07      | 5-33      | 5-60      | 5-87      | 6-13      | 6-40      | 6-67      | 6-93      | 7-20      | 7-47      | 7-73      | 8-00      |
| 9            | 5-40                                 | 5-70      | 6-00      | 6-30      | 6-60      | 6-90      | 7-20      | 7-50      | 7-80      | 8-10      | 8-40      | 8-70      | 9-00      |
| 10           | 6-00                                 | 6-33      | 6-67      | 7-00      | 7-33      | 7-67      | 8-00      | 8-33      | 8-67      | 9-00      | 9-33      | 9-67      | 10-00     |
| 11           | 6-60                                 | 6-97      | 7-33      | 7-70      | 8-07      | 8-43      | 8-80      | 9-17      | 9-53      | 9-90      | 10-27     | 10-63     | 11-00     |
| 12           | 7-20                                 | 7-60      | 8-00      | 8-40      | 8-80      | 9-20      | 9-60      | 10-00     | 10-40     | 10-80     | 11-20     | 11-60     | 12-00     |
| 13           | 7-80                                 | 8-23      | 8-67      | 9-10      | 9-53      | 9-97      | 10-40     | 10-83     | 11-27     | 11-70     | 12-13     | 12-57     | 13-00     |
| 14           | 8-40                                 | 8-87      | 9-33      | 9-80      | 10-27     | 10-73     | 11-20     | 11-67     | 12-13     | 12-60     | 13-07     | 13-53     | 14-00     |
| 15           | 9-00                                 | 9-50      | 10-00     | 10-50     | 11-00     | 11-50     | 12-00     | 12-50     | 13-00     | 13-50     | 14-00     | 14-50     | 15-00     |
| 16           | 9-60                                 | 10-13     | 10-67     | 11-20     | 11-73     | 12-27     | 12-80     | 13-33     | 13-87     | 14-40     | 14-93     | 15-47     | 16-00     |
| 17           | 10-20                                | 10-77     | 11-33     | 11-90     | 12-47     | 13-03     | 13-60     | 14-17     | 14-73     | 15-30     | 15-87     | 16-43     | 17-00     |
| 18           | 10-80                                | 11-40     | 12-00     | 12-60     | 13-20     | 13-80     | 14-40     | 15-00     | 15-60     | 16-20     | 16-80     | 17-40     | 18-00     |
| 19           | 11-40                                | 12-03     | 12-67     | 13-30     | 13-93     | 14-57     | 15-20     | 15-83     | 16-47     | 17-10     | 17-73     | 18-37     | 19-00     |
| 20           | 12-00                                | 12-67     | 13-33     | 14-00     | 14-67     | 15-33     | 16-00     | 16-67     | 17-33     | 18-00     | 18-67     | 19-33     | 20-00     |
| 21           | 12-60                                | 13-30     | 14-00     | 14-70     | 15-40     | 16-10     | 16-80     | 17-50     | 18-20     | 18-90     | 19-60     | 20-30     | 21-00     |
| 22           | 13-20                                | 13-93     | 14-67     | 15-40     | 16-13     | 16-87     | 17-60     | 18-33     | 19-07     | 19-80     | 20-53     | 21-27     | 22-00     |
| 23           | 13-80                                | 14-57     | 15-33     | 16-10     | 16-87     | 17-63     | 18-40     | 19-17     | 19-93     | 20-70     | 21-47     | 22-23     | 23-00     |
| 24           | 14-40                                | 15-20     | 16-00     | 16-80     | 17-60     | 18-40     | 19-20     | 20-00     | 20-80     | 21-60     | 22-40     | 23-20     | 24-00     |
| 25           | 15-00                                | 15-83     | 16-67     | 17-50     | 18-33     | 19-17     | 20-00     | 20-83     | 21-67     | 22-50     | 23-33     | 24-17     | 25-00     |
| 26           | 15-60                                | 16-47     | 17-33     | 18-20     | 19-07     | 19-93     | 20-80     | 21-67     | 22-53     | 23-40     | 24-27     | 25-13     | 26-00     |
| 27           | 16-20                                | 17-10     | 18-00     | 18-90     | 19-80     | 20-70     | 21-60     | 22-50     | 23-40     | 24-30     | 25-20     | 26-10     | 27-00     |
| 28           | 16-80                                | 17-73     | 18-67     | 19-60     | 20-53     | 21-47     | 22-40     | 23-33     | 24-27     | 25-20     | 26-13     | 27-07     | 28-00     |
| 29           | 17-40                                | 18-37     | 19-33     | 20-30     | 21-27     | 22-23     | 23-20     | 24-17     | 25-13     | 26-10     | 27-07     | 28-03     | 29-00     |
| 30           | 18-00                                | 19-00     | 20-00     | 21-00     | 22-00     | 23-00     | 24-00     | 25-00     | 26-00     | 27-00     | 28-00     | 29-00     | 30-00     |
| 1            | 0-15                                 | 0-16      | 0-17      | 0-18      | 0-19      | 0-19      | 0-20      | 0-21      | 0-22      | 0-23      | 0-23      | 0-24      | 0-25      |
| 1            | 0-30                                 | 0-32      | 0-33      | 0-35      | 0-37      | 0-38      | 0-40      | 0-42      | 0-43      | 0-45      | 0-47      | 0-48      | 0-50      |
| 1            | 0-45                                 | 0-47      | 0-50      | 0-53      | 0-55      | 0-57      | 0-60      | 0-62      | 0-65      | 0-68      | 0-70      | 0-72      | 0-75      |

If a Seaman's Wages are not paid within ten days after the voyage is ended, he may libel the vessel. But if he is bound to remain and assist in discharging the cargo, then he cannot attach the vessel until ten days after the cargo is discharged, unless she is going to sail before that time. If the sailor is discharged at the end of the voyage, and before the cargo is unloaded, then he may proceed immediately against the vessel.

*Warehouse Bond.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and C. D., are held and firmly bound unto the United States of America in the sum of — dollars, to be paid to the United States: for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals.

Dated this — day of —, one thousand eight hundred and —.

*The condition of this obligation is such,* That if the above bounden A. B. and C. D., or either of them, or either of their heirs, executors or administrators, shall, on or before the expiration of three years, to be computed from the date of the importation of the goods, wares and merchandise, hereafter mentioned, well and truly pay or cause to be paid unto the Collector of the customs for the port of — for the time being, the sum of — dollars, or the amount of duties to be ascertained as due and owing on goods, wares, and merchandise imported by — in the — master, from —, consisting of — or shall in the mode prescribed by law on or before the expiration of the three years aforesaid withdraw the said goods from the Public Stores where they may be deposited at the port of — then this obligation is to be void, otherwise to remain in full force and virtue.

A. B. [L. s.]  
C. D. [L. s.]

*Sealed and delivered in presence of*

*Custom House Power of Attorney.*

[Goods consigned to persons not residing in the port where the goods arrive, must be entered by the attorney of the Consignee, duly appointed]

KNOW ALL MEN BY THESE PRESENTS, That we, John Doe and Richard Roe, composing and trading under the firm of John Doe & Co., of the city of —, state of —, merchants, do make, constitute and appoint John K. Stimson, Geo. A. Stimson, and Wm. H. Pillow doing business in Boston, under the style of John K. Stimson and Company, severally or separately, true and lawful attorneys for us and in our name, place and stead, to enter in due form of law, at any Custom House in the United States of America, all goods, wares and merchandise, which have been imported, or may hereafter be imported, by us, or which have arrived, consigned, or may hereafter arrive, consigned to us, or in which we are or may be interested or concerned.

And for us and in our name, place and stead to sign, seal, execute and deliver, all and every bond and bonds which may be required to secure the duties thereon, or for the transportation or exportation of the same; or any other bond or bonds required by the revenue laws or the regulations of the Treasury department of the United States, or the Collector of the Customs of the District of Boston, relative to any such Merchandise; or which may be necessary to obtain the debenture and debentures, upon such of the said goods, wares and merchandise, as may be exported for us or on our account. To have, take, and receive all debenture certificates to be issued thereupon for us, and in our name, place and stead to endorse, assign and transfer the same: or have, take, and receive the moneys due and to grow due thereon: And generally, as our Attorneys, to do, transact, and perform all Custom House business, of what kind soever, in which we are or may be interested or concerned, as fully and effectually to all intents and purposes, as we if present there in person, could do; also to set our seal to any instrument which may be necessary in the premises, and the same to acknowledge for us to be our act and deed; and generally to do and perform all things relating to the premises, which we could law-

fully do, if personally present, and as fully and effectually, to every intent and purpose, although the same should seem to require more precise or special authority than is herein expressed. And especially authorizing and empowering our said Attorneys for us and in our name, place and stead to sign, seal, execute and deliver all Bonds of Indemnity and other specialties, and also all other documents which may be necessary for effecting the premises; hereby ratifying all and whatsoever our said Attorneys may lawfully do by virtue hereof.

And it is hereby declared and understood, that this power shall be and remain in full force and virtue until revoked by written notice given to the Collector.

In witness whereof, we have hereunto set our hands and seals this — day of —, 185—.

JOHN DOE, [L. s.]  
RICHARD ROE, [L. s.]

*Signed, sealed and delivered in presence of*

A. B.  
C. D.

NOTE.—In all cases where the above Power of Attorney is given, the names of all the persons constituting a firm must be written in full.

State of —, }  
County of —, } ss.

Be it known, that on the — day of —, 185—, personally appeared *John Doe* and *Richard Roe*, and acknowledged before me the foregoing Power of Attorney to be their free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office the — day of —, 185—.

J. K., Notary Public.

### *Bottomry Bond — usual form.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., master of the ship or vessel, called the *Eagle* of B., belonging to C. D., in N. V., am held and firmly bound unto E. F. of G. in the county of G. in the state of M., one of the U. States of America. merchant, in the sum of — lawful British money, to be paid to the said E. F., or his certain attorney or attorneys, executors, administrators or assigns; for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel and furniture, and the freight to be earned by her on the voyage after mentioned, firmly by these presents, sealed with my seal.

Dated this — day of —, one thousand eight hundred and —.

Whereas, the said ship or vessel is lately arrived at G. from N. V., and having on her voyage to the port of G. sustained damage [*here state the damage and circumstances giving rise to the occasion for taking up the money, with a short statement of the repairs and equipments, which have been required to enable the vessel to proceed on her voyage*] and she is now bound for and about to return to N. V. aforesaid; and the said A. B. in order to be enabled to pay for the necessary repairs of said vessel and the necessary and lawful disbursements and expenses thereof, and to enable him to proceed to sea with her on the said intended voyage, hath requested the said E. F. to lend and advance the sum of — for the aforesaid purposes, which the said E. F. hath accordingly done on the hazard and adventure of the said vessel on her said intended voyage from G. to N. V. aforesaid, and the said master, A. B., hath taken up the same on the hazard and adventure aforesaid.

*Now the condition of the above obligation is such, That if the said ship*

or vessel do and shall with all convenient and reasonable speed, sail from the port of G. aforesaid, on the said intended voyage to N. V., and that without deviation (the perils, damages, accidents, and casualties of the seas and navigation excepted), and if the above bound A. B. his heirs, executors or administrators, or the owners of the said vessel do and shall within — days after the said vessel shall arrive at N. V. aforesaid, well and truly pay or cause to be paid unto the said E. F., his agent, attorney, executors, administrators, or assigns, the said sum of —, lawful sterling money, together with — pounds sterling per centum, bottomry premium thereon; or if on the said voyage the said ship or vessel shall unavoidably be utterly lost, cast away, or destroyed, in consequence of fire, enemies, men of war, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said A. B., his executors or administrators, or by the owners of the said ship or vessel, their executors, or administrators: then the above obligation shall be void. A. B. for self and C. D. [L. s.]

*Signed, sealed and delivered in presence of*

NOTE.— The owner is not liable, unless he has, by previous deed, under seal, given the master authority to add his security.

### *Respondentia Bond.*

[From Abbott on Shipping, 4th Lond. Ed.]

KNOW ALL MEN BY THESE PRESENTS, That, we, A. B. commander of the ship *Belvidere* and C. D., of —, are held and firmly bound to E. F., of —, merchant, in the sum of — lawful money of the —, to be paid to the said E. F., or to his certain attorney, executors, administrators, or assigns. to which payment we bind ourselves jointly and separately, our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this — day of —, one thousand eight hundred and —.

Whereas, the above-named E. F. has, on the day of the date above written, advanced and loaned unto the said A. B. and C. D., the sum of — upon the goods, merchandises, and effects laden, and to be laden on board the good ship or vessel called the *Belvidere*, of the burden of 987 tons or thereabouts, now riding at anchor in the harbor of —, outward bound to China, and whereof A. B. is commander, by his acceptance of a bill of exchange to that amount at *four months' date*, for the account of them, the said A. B. and C. D.

Now the condition of this obligation is such, That if the said ship or vessel do and shall, with all convenient speed, proceed and sail from and out of the said port of —, on a voyage to any port or place, ports or places, in the East Indies, China, Persia, or elsewhere, beyond the Cape of Good Hope, and from thence do and shall sail, return, and come back into the said port of —, at or before the end of thirty-six calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage, (the dangers and casualties of the seas excepted); and if the said A. B. and C. D., or either of them, their, or either of their heirs, executors or administrators, do and shall, within thirty days next, after the said ship or vessel shall be arrived at her moorings in the said port of —, from her said intended voyage, or at or upon the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said E. F., his executors, administrators or assigns, the full sum of —, together with — per cal-

endar month for each and every calendar month, and so proportionally for a greater or a lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said thirty-six calendar months, over and above twenty calendar months, to be accounted from the day of the date above written; or if in the said voyage, and within the said thirty-six calendar months to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men of war, or any other casualties shall unavoidably happen, and the said A. B. and C. D., their heirs, executors, or administrators, do and shall within six calendar months next after such loss well and truly account for (upon oath if required) and pay unto the said E. F., his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said A. B. carried from —, on board of the said ship or vessel, and the net proceeds thereof, and on all other goods and effects which the said A. B. shall acquire during the said voyage for or by reason of such goods, merchandises and effects, and which shall not be unavoidably lost, then the above written obligation to be void,

*Signed, sealed and delivered in presence of*

A. B. [L. s.]  
C. D., [L. s.]

### *Agreement of Charter Party outwards.*

It is this day mutually agreed between A. B., Master of the good Ship or Vessel called the *Sultan*, A 1, and coppered, of the burthen of nine hundred tons, register measurement, or thereabouts, now at —, and Messrs. C. & Co, of —, Merchants. That the said Ship being tight, staunch, and strong, and in every way fitted for the Voyage, shall forthwith proceed to —, and then load from the Charterer's Agents a full and complete Cargo of Cotton, which the said Merchants bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions, and Furniture; and being so loaded, shall therewith proceed to —, or so near thereunto as she may safely get,\* and deliver the same on being paid Freight at and after the rate of — shillings per Ton of 20 cwt. with — per cent. primage thereon in sterling. (The Act of God, Enemies, Fire, and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever nature and kind soever, during the said Voyage, always excepted.) The Freight to be paid on unloading, and right delivery of the Cargo, in Cash.

Thirty running Days are to be allowed the said Merchant (if the Ship is not sooner despatched) for loading the said Ship at —, and for discharging at —, to commence on the Vessel's arrival at — and being ready to load, cease when loaded, recommence on her arrival at — and being ready to discharge, and cease when finally discharged, and — days on Demurrage, over and above the said lying days at — pounds per day. Penalty for non-performance of this Agreement — dollars.

Cargo to be sent to and taken from alongside of the Vessel free of any expense to the Ship.

The Vessel to be consigned to Charterers' Agents at ports of loading and discharge.

Witness our hands and seals this — day of —, A. D. 185—.

*Executed in presence of*

*Signatures and Seals.*

\* This means that she should get within the ambit of the port, though she may not be able to enter it.



*Agreement of Steamboat Charter Party.*

It is mutually agreed between A. B. of the city of —, owner of the good steamboat *Sultan*, of the burthen of four hundred tons, or thereabouts, register measurement, now lying in the port of —, (whereof E. F., is at present master,) and C. D., merchant, of the said city. That the said A. B., for the consideration hereinafter mentioned, doth let and charter the aforesaid steamboat, with the appurtenances, for a voyage from C. to B., (the Act of God, enemies, fire, machinery, boilers, steam, and all other dangers and accidents of seas, rivers, lakes, and steam navigation excepted); and the said A. B. covenants with the said C. D. in manner following, that is to say: that the said steamboat *Sultan*, in and during the voyage aforesaid, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite necessary for such a vessel and such a voyage; and the said A. B. doth further engage to take and receive on board said steamboat, all such lawful goods and merchandise as the said C. D. or his agents may think proper to ship, not exceeding what she can reasonably stow and carry, over and above her tackle, provisions, fuel, furniture and machinery; and being so loaded shall therewith proceed to B., and there be discharged.

In consideration whereof, the said C. D. agrees to pay the said A. B., the sum of — dollars in full for the freight or hire of said steamboat and her appurtenances, one-half to be paid in cash on unloading and right delivery of the cargo, and the remainder by an approved bill at three months following.

Penalty for non-performance of this Agreement, — dollars.

In witness whereof, the said parties have hereunto set their hands and seals the — day of —, A. D. 185—.

*Executed in presence of*

*Signatures and Seals.*

*Bill of Sale of Registered Ship or Vessel.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of G. owner of the ship or vessel, called the *Atlantic*, of the burthen of eight hundred tons or thereabouts, for and in consideration of the sum of — dollars, lawful money of the United States, to me in hand paid, at or before the sealing and delivery of these presents, by C. D., of the said place, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented and paid, have bargained and sold, and by these presents do bargain and sell, unto the said C. D., his executors, administrators and assigns, all the hull or body of the said ship, or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, and all other necessities thereunto belonging; the certificate of the registry of which said ship, or vessel, is as follows, to wit: (*copy certificate of registry* :) To have and to hold the said ship, or vessel, and appurtenances thereunto belonging, unto the said C. D., his executors, administrators, and assigns, to his and their sole and only proper use, benefit, and behoof, forever. And I do, for myself, my heirs, executors and administrators, covenant and agree to and with the said C. D., his executors, administrators and assigns, to warrant and defend the said ship, or vessel, and all the before mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, the said A. B. has, &c.

A. B. [L. s.]

*Bill of Sale of an Enrolled Vessel.*

The form for this should be similar to the preceding one, excepting that the certificate of enrolment should be inserted in place of the certificate of registry.

If a vessel be at sea, a bill of sale of her is good, *prima facie*, against the claims of all persons. And it is only subject to be defeated by the negligence of the vendee in taking possession of her after her return — 8 M. R. 287.

No Bill of Sale of a vessel or part thereof, is valid, except as against grantors, unless such bill of sale, mortgage, hypothecation, or conveyance be recorded in the office of the collector of the customs where such vessel is registered or enrolled.—Bottomry however does not lose its priority.—Collectors must record all such bills of sale, &c. ; and keep an Index for the convenience of those concerned, and for their inspection during office hours ; collectors shall furnish certified copies of such records, on the receipt of fifty cents. The oath of ownership must set forth the part of each vessel belonging to each owner and the same must be inserted in the register or enrolment.—*Law of 1850.*

All complaints in writing to Consuls or Commercial Agents, that a vessel is unseaworthy, shall be signed by the first, or second and third officers, and a majority of the crew, before the consul or commercial agent shall be authorized to notice such complaint, or proceed to appoint inspectors.

### *Registry Bond.*

[Ships, or vessels, if not registered, lose the privileges and benefit of ships of the United States, and are deemed foreign vessels ; and, if found in the coasting trade, or fisheries, without being registered or licensed, with domestic goods on board, must pay foreign tonnage duties, and if with foreign goods on board are liable to forfeiture.]

KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and C. D. are held and stand firmly bound to the United States of America, in the full sum of — dollars ; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals.

Dated this — day of —, one thousand eight hundred and —.

*The condition of this obligation is,* That whereas, L. L., Collector for the District of —, has issued and granted a Certificate of Registry in the manner prescribed by the Act entitled "*An Act concerning the Registering and Recording of ships or vessels*," for the — called the —, of the burthen of — tons, whereof E. F. is at present master, which Certificate is dated on this day, and numbered —.

Now, therefore, if the said Certificate of Registry shall be solely used for the said vessel for which it had been granted, and shall not be sold, lent or otherwise disposed of to any person or persons whomsoever ; and in case the said vessel shall be lost, or taken by an enemy, burnt or broken up, or shall otherwise be prevented from returning to the port to which she belongs, if the said Certificate (if preserved) shall, within eight days after the arrival of the master or person having the charge or command of the said vessel within any District of the United States, be delivered up to the Collector of such District ; or if any foreigner or any person or persons for the use and benefit of such foreigner, shall purchase, or otherwise become entitled to, the whole or any part or share of or interest in the said vessel, the same being within a District of the United States, if the Certificate shall, within seven days after such purchase, change or transfer of property be delivered up to the Collector of said District ; or if such purchase, change or transfer of property shall happen when the said vessel shall be at any foreign port or place, or at sea, if the master or person having the charge or command thereof, shall within eight days after his arrival within any District of the United States, deliver up the said Certificate to the Collector of such District ; then the said obligation shall be void, and of no effect ; but otherwise shall remain in full force and virtue.

*Signed, sealed and delivered in presence of*

*Signatures and Seals.*

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**DIRECTIONS & FORMS**  
**FOR THE**  
**Execution and Acknowledgment**  
**OF DEEDS**  
**TO BE**  
**USED OR RECORDED IN OTHER STATES.**

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**Duties and Liabilities**  
**OF**  
**EXECUTORS & ADMINISTRATORS.**

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This volume contains the General Rules relating to the Nature of Deeds, and Directions and Forms for their Execution and Acknowledgment required by the Statutes of each State.

The Duties and Liabilities of Executors and Administrators, with Forms of Deeds and Petitions.

Guardianship.—Rights and Duties of Parents and Children.

Liabilities of Minors.

Law of Wills, with Forms of Wills, &c., &c., &c.

Law of Partnership, with Forms of Special Partnerships.

Law of Principal and Agent.

Offences against Trade.

Usury; Rates of Interest in all the States; Forfeit for Usury.

Obtaining Money, Goods, &c., by False Pretences; Fraud.

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BY I. R. BUTTS,

Author of the "Business Man's Law Library"; "U. States Business Man's Law Cabinet"; "Merchant's and Mechanic's Assistant"; &c.

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By I. R. BUTTS,  
in the Clerk's Office of the District Court of the District of Massachusetts

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# INTRODUCTION.

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## GENERAL REQUISITES OF A DEED.

1. **DEEDS.**—All instruments *signed, sealed and delivered* are, in law, Deeds, but in common acceptance, a Deed is a conveyance of land.

It is not material if the Deed be in the *first* or *third* person, so as the words be aptly applied. Neither is it necessary that the English be true or congruous, for false and incongruous English seldom or never hurteth a Deed. A Deed may be good without *habendum, warranty, reservation, or covenant*.—*Shephard's Touchstone*, p. 55.

*Chancellor Kent* says, "a deed would be perfectly competent in any part of the United States to convey a fee, if it was to be to the following effect :

"I, A. B., in consideration of one dollar to me paid by C. D., do bargain and sell, [or in New York, Illinois, Missouri, and several other States, *grant*] to C. D. and his heirs, the lot of land [describe it,] witness my hand and seal, &c." 4 *Kent's Com.* 461.

*Executors and Administrators* need not be named in any legal instrument ; they are bound by every covenant, without being named, unless it is such a covenant, as is to be performed personally by the covenantor, and there has been no breach before his death. *Cro. Eliz.* 553. *Shephard's Touchstone*, 178.

2. **PARTIES.**—The parties must be legally able to contract and there must be a subject to contract for ; all which must be expressed by sufficient names.

If the wife's right of *dower* or *homestead* is to be released, she must join with her husband in the deed.\*

A husband and wife may, by their joint deed, convey the real estate of the wife ; and in many states her acknowledgment must be taken apart from her husband.

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\* In Massachusetts, and in many states, it is customary for the wife to join with her husband in the execution of the deed, with an express relinquishment of her right of dower. She may also release her claim to dower by her separate deed, subsequent to her husband's sale. [See Form of Deed for relinquishing Dower, at page 12.]

If a grantor execute a conveyance by an attorney, it must be executed in the name of his principal, viz. :  
 “*A. B. by C. D. his Attorney.*”

A power to execute a conveyance must itself be under seal, and be duly acknowledged and recorded.

*Form of Acknowledgment where the Deed is executed by an Attorney.*

STATE OF —, COUNTY OF —, ss.

Be it remembered, &c., personally appeared A. B., by C. D. his attorney, and acknowledged the foregoing instrument to be his free act and deed.

*Another Form of Acknowledgment, by Attorney.*

STATE OF —, COUNTY OF —, ss.

Personally appeared A. B., who signed and sealed the foregoing deed as the attorney of the above named C. D., and acknowledged the same to be the free act and deed of the said C. D.

3. CONSIDERATION. — The Deed should be founded upon a good or sufficient consideration, to give validity to it against the claims of creditors or subsequent purchasers. A Deed made upon fraud or collusion to deceive purchasers or lawful creditors will be void, but not as between the parties themselves; that is, the grantor or grantee cannot vacate his own act.

4. DESCRIPTION. — A Deed must contain a distinct description of the land or tenement, how it is bounded, whether on a creek, highway, street, or known and fixed monuments, &c., &c. The Deed may refer for a description of the land, or tenement, either to a *plan*, another *deed*, a *will*, or to the actual condition of the estate. Where land is described by metes and bounds, and as containing a certain number of feet, or acres, the description by metes and bounds controls the quantity, and where lands are described as bounded by a highway, or creek, the line runs through the middle of the same.

*Appurtenances.* A Deed conveying a house, “*with the appurtenances*,” will pass the *garden*, *curtilage*, and the *close* adjoining the house, and on which the house is built; so the conveyance of a wharf and dock “*with appurtenances*,” passes the flats in front; so the conveyance of a mill, “*with the appurtenances*,” will carry the head of water; so a right of way, appurtenant to land, is appurtenant to the whole, and if such land be divided, and conveyed in separate parcels, a right of way thereby passes to each of the grantees.

5. INCUMBRANCES.—Reservations, Mortgages, Restrictions, Liens, Rights of Way, &c., &c., should follow the Description.\*

6. HABENDUM, contains the conditions.†

7. COVENANTS.—A Deed usually contains several covenants, as follows: the grantor covenants that he is lawfully seized in fee of the premises, that they are free from all incumbrances, [if there are any, they should be referred to here,] and that he will *warrant and defend the same against the lawful claims and demands of all persons*; this last clause in italics constitutes a *warranty* Deed. In a *quit-claim* Deed there is inserted after these words in italics, *claiming by, through or under me, but against none other*. The effect of covenants is to give to the purchaser a claim for damages, if at any time disturbed by an adverse claimant.

8. DATE.—When no date is inserted, the time will be reckoned from the delivery.

9. ERASURES.—When any erasure or interlineation is made in a material part of a Deed, a memorandum thereof should be made in the margin of the Deed, testifying that it was done before execution.

An altered Deed is a new Deed, therefore a material alteration of a Deed, though with consent of parties, after its execution, will render it inoperative, unless followed by a re-execution, as an original Deed.—8 *Connecticut Rep.* 269.

10. SIGNING.—Deed must be signed by the grantors.

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\* The laws of Massachusetts require that "In all conveyances of real estate by *deed* or *mortgage*, upon which any incumbrance exists, the grantor or grantors, whether in his or their own right, or as executor, administrator, assignee, or trustee, shall, before the consideration is paid, make known to the grantee the existence and nature of such incumbrance, so far as they have knowledge of the same, by exception in the deed, or otherwise. In failure of which, such persons shall be punished by imprisonment in the county jail or house of correction for a term not exceeding one year, or by fine not exceeding one thousand dollars. And whenever any real estate is conveyed, free from all incumbrances, and by the records, incumbrances appear to exist, whatever damages the grantee, &c., may sustain in removing them shall be chargeable to the grantor, &c., and recovered in an action of law." *Mass. Laws*, p. 25, 1855.

† And here it would be well to observe that the grantee should fully apprehend the conditions expressed in the deed. Where one conveyed a house, "on *condition* that no windows should be placed in the north wall for thirty years," and windows were made within that time, it was held that this could not be construed as a covenant, and the estate was wholly forfeited. 8 *Pick.* 284.

11. **SEAL.**—The common law intended by a *seal*, an impression upon wax, wafer, or other tenacious substance. In most of the eastern and middle states a seal is, ordinarily, impressed on a piece of paper affixed to the Deed by a wafer at the end of each name. In some of the southern and western states a scroll of the pen, or circle of ink at the end of each name is substituted; and in a few states neither seal nor scroll is required.

It is advisable to use the ordinary seal in all cases where the person is not familiar with the state laws.

12. **ATTESTATION.**—In many of the states *two witnesses* are required to attest the execution of a deed; in some only one, and in a few none. It is safer, where persons are not acquainted with the statutes of each state, to have two attesting witnesses to legal instruments.

*Form of Attestation.*

Signed, sealed, and delivered, by the within named, [or above named] A. B.,

*If the party be deaf and dumb, say:*

who being deaf and dumb, but capable of reading, the same was first read over by him, and he seemed perfectly to understand the contents thereof, in the presence of

*If by a person blind, say:*

and he being blind, the same was carefully and audibly read over to him in the presence of

*If in case of erasures in legal instruments, say:*

Signed, sealed, and delivered by the above named A. B., the words, [*here copy the words*] having been previously interlined in the fourth and fifth lines of the first page, or written over obliterations, between [*mentioning the lines and page*], or the word *Henry* having been previously interlined between the words &c., and the name of *J. Hogan* written on an erasure or erasures in the fifth line of the second page thereof, in the presence of

G. H.

E. M.

13. **ACKNOWLEDGMENT.**—The acknowledgment of Deeds is made by the grantors, or by attorney, or proved before a commissioner appointed to take acknowledgment or proof of Deeds and other instruments, or before a judge, or justices of the United States courts, judges of courts of record, notaries public, justices of the peace, mayors of cities, or such officers as are authorized by the laws of the states to take acknowledgments of deeds. In some states the acknowledgment

is required to have a certificate attached thereto, of the secretary of state, or the clerk of a court of record, or other proper certifying officer, to the following effect :

*Form of Certificate of a Governor, or Secretary of State, Clerk of a Court of Record, &c.*

State of — County of — } ss.  
Court of —

The above named A. B. is a Justice of the Peace in and for our County of S., duly qualified, and [*I am acquainted with his handwriting,*] and [*believe his signature and seal to be genuine ;*] [*and the above or (within) deed is executed and acknowledged according to the laws of this State.*]

[*Seal*] In testimony whereof, I have hereto set the Seal of said Court, this — day of —, 185 .

C. D., Clerk, &c.

*Testimonium of a Mayor of a City, or other Officer.*

In testimony whereof, I, A. B., *Judge of the Court of —*, in the State aforesaid, do hereunto subscribe my name, and set the seal of said court, on the day and year first above written.

[*Official Seal*]

A. B., Judge of, &c.

In general the full official title of the acknowledging officer must be attached to the certificate ; and his official seal annexed.

In countries without the United States, acknowledgments are taken before a Commissioner, (if one has been appointed), or an Ambassador, Minister, Consul, or other representative of the United States.

In acknowledging a Deed the grantor must appear before the officer, and if he is not known to him, he should take with him a witness to prove his identity. In most of the states the wife must be examined privately and apart from her husband.

A *certificate* of the acknowledgment of a Deed is not good unless it is in *substantial* compliance with the laws of the state in which the land is situated. It need not however follow the exact words of the statute.

In some states if a deed is proved, it must appear that the witness proving it was a subscribing witness.

*Form of Certificate of Proof of a Subscribing Witness.*

State of — } ss.  
County of —

I, A. B., a commissioner, &c. [or, *justice of the peace of the county aforesaid*] hereby certify that C. D., a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that S. B., the grantor in the conveyance, voluntarily executed the same in his presence, and in the

presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand, &c.

Or,

Personally came H. L., a subscribing witness to the within conveyance, [or other instrument,] and made oath, that he saw C. D., the grantor, sign, seal, and deliver the same as his act and deed.

In testimony, &c.

Many states require that the party shall be personally known to the officer, or proven to be the party under the oath of a *credible witness*—which must be so stated in the certificate, as follows:

Who are proven to me by the testimony, under oath, of G. H., a credible witness. [See Execution of Deeds.]

14. DELIVERY.—A Deed takes effect from its delivery. After the delivery the estate vests in the purchaser, though the grantor keep the Deed, or fraudulently obtain and destroy it. No particular form is necessary for the delivery of a Deed; an act which indicates an intention of putting the purchaser in possession is sufficient.

15. RECORDING.—Every Deed should be *recorded, registered, or enrolled* in the county or town where the land lies. If not recorded it is good only against the grantor and his heirs, and void against subsequent attaching creditors of the grantor, or purchasers, having no notice of the first conveyance. In some states a certain time is allowed within which a Deed should be recorded. It is safer to have Deeds recorded *as soon after their execution as possible*.

No Deed is entitled to record unless duly acknowledged, or proved.

---

*Separate Relinquishment of Dower on Husband's Deed.*

State of ——— }  
County of ——— } ss.

KNOW ALL MEN BY THESE PRESENTS, That I, C. D., wife of the within named A. D., in consideration of one dollar to me paid by the within named E. F., do hereby relinquish and release unto the said E. F. his heirs and assigns forever, all my dower, and right of dower in the premises within described.

In witness whereof, &c.

C. D. [L. s.]

In presence of

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In *Massachusetts* a deed of release of dower by a wife must be executed jointly with her husband; and in some States it must state that the relinquishment was made separate and apart from the husband, and was made freely and voluntarily, &c.



# DIRECTIONS AND FORMS

## FOR THE

### Execution and Acknowledgment of Deeds.

[The following Forms of Acknowledgment were furnished for this work, by B. H. CURRIER, Counsellor at Law, and Commissioner for all the States to take Acknowledgments of Deeds and other Instruments. Office, No. 19 Kilby Street, Boston.]

*Where a married woman is not a party to a deed, that part relating to the wife, in the following acknowledgments, must be omitted.*

#### MAINE.

##### *Execution of Deed.*

Deeds must be sealed with a seal. Two witnesses are usual. Wife need not be examined separately; but she must join her husband in the deed releasing her claim to dower; and if her interest be an estate of inheritance, she must also acknowledge the deed as well as her husband. Deed must be acknowledged by one or more grantors, if in a foreign country before a minister or consul of the U. States, or notary public;—if in another State before a Maine commissioner, notary public, magistrate, or justice of the peace;—and if within the State, before a justice of the peace; and recorded immediately in the Registry of Deeds for the county where the land lies.

##### *Form of Acknowledgment.*

State of [Virginia] }  
County of ———. } ss.

*Be it remembered, that on this ——— day of ———, 1857, before me, B. H. C.,\* a Commissioner in and for the State of ———, appointed by the Governor of the State of Maine to take the acknowledgment and proof of Deeds and other instruments of writing, to be used or recorded in the said State of Maine, and to administer*

\* If the acknowledgment is taken before a justice of the peace, notary public, &c., say: "B. H. C., a Justice of the Peace of the County aforesaid, personally appeared &c." or, "B. H. C., a Notary Public in and for the State of ———, personally appeared &c."— or, "before me, Judge of the Court of Common Pleas (or other court) for the County and State aforesaid, personally appeared &c."— or, "before me, Mayor of the City of ———, personally appeared &c."

*oaths and affirmations*, personally appeared D. E.,\* and acknowledged the above instrument, by him signed and sealed, to be his free act and deed.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, the day and year first above written.

B. H. C., *Commissioner for Maine.*

## NEW HAMPSHIRE.

### *Execution of Deed.*

Deeds must be sealed. Two witnesses are required. Wife need not be examined separately; but she may join with her husband in any conveyance of real estate, and also in release of dower, and in both instances, the deed must be executed and acknowledged by both husband and wife. Deed must be acknowledged, if in a foreign country, before a minister or consul of the U. States; — if in another State before a New Hampshire commissioner, notary public, or justice of the peace; — if within the State, before a notary public, or justice of the peace; and recorded in the Registry of Deeds in which the land lies.

### *Form of Acknowledgment.*

Commonwealth of Kentucky, } ss.  
County of —.

Be it remembered, &c., personally appeared the above named D. E.,\* and acknowledged the foregoing instrument to be his free act and deed. In testimony whereof I have, &c.

## VERMONT.

### *Execution of Deed.*

Deeds must be sealed. Two witnesses are required. If the fee of the estate is in the wife, the husband must join with her in the conveyance, and the wife must acknowledge, separate and apart from her husband, “that she executed said conveyance voluntarily and freely, without any fear or compulsion of her husband.” — If the fee is not in the wife she need not unite in a conveyance of the husband’s land, as she has dower only in such land as her husband *dies seized of*. Deed must be acknowledged, if in a foreign country before a minister or consul of the U. States; — if in another State before a Vermont commissioner, notary public, magistrate, or justice of the peace; — if within the State before a notary public, master of chancery, justice of the peace, or town clerk; and recorded in the town clerk’s office, or by the clerk of the county where the land lies.

\* *When conveyance is acknowledged by husband and wife the certificate should read: “and M. E., his wife, and severally acknowledged the above instrument, by them signed and sealed, to be their free act and deed.”*

*Form of Acknowledgment.*

State of —, }  
 County of —. } ss.

Be it remembered, &c., personally appeared D. E., the signer, and sealer of the above written instrument, and acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto set my hand, &c.

## MASSACHUSETTS.

*Execution of Deed.*

Deeds must be sealed. Two witnesses are usual. Wife need not be examined separately. A husband and wife may, by their joint deed, convey the estate of the wife, but the wife is not bound by the covenants in the deed; she may also bar her right of dower in her husband's estate, by joining with him in the deed, therein releasing her claim to dower and homestead. Deed must be acknowledged by one or more grantors, if in a foreign country, before a Massachusetts commissioner, minister or consul of the U. S.;—if in another State, before a Massachusetts commissioner, magistrate, justice of peace, or notary public;—if within the state, before any justice of peace; and recorded in the office of the Registry of Deeds in which the land lies.

*Form of Acknowledgment.* \*

State of —, }  
 County of —. } ss.

Be it remembered, &c., personally appeared the above named D. E.,\* and acknowledged the foregoing instrument to be his free act and deed.

In testimony whereof I have hereunto set my hand, &c.

## RHODE ISLAND.

*Execution of Deed.*

Deeds must be sealed. Wife must be examined separately and apart from her husband. Wife's estate must be conveyed by joint deed of husband and wife. If wife dispose of her dower interest, by separate deed, it must be attested by two witnesses. Deed must be acknowledged, if in a foreign country, before a minister, consul, vice-consul, charge d'affaires or commercial agent of the U. States, or the same may be executed in the presence of two witnesses, and certified under the hand and official seal of the grantor, that such deed or instrument is his act and deed;—if in another State, before a Rhode Island commissioner, judge, justice of the peace, mayor or public notary;—if

\* See note on preceding page.

within the State, before a senator, justice of the peace, notary public, judge, town clerk, or mayor; and recorded in the town where the land lies.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared the above named D. E., and acknowledged the foregoing instrument to be his voluntary act and deed, hand and seal. And at the same time, F. E., wife of the said D. E., personally appeared, and being by me examined separately and apart from her husband, and the said instrument being shown and explained to her by me, acknowledged the same to be her free and voluntary act and deed, and declared that she did not wish to retract the same.

In testimony whereof I have hereunto set my hand, &c.

## CONNECTICUT

### *Execution of Deed.*

Deeds must have a seal or the word "seal" or "L. s." or the impression of a seal without wax. Two witnesses are required. Wife's estate is conveyed by joint deed of husband and wife. A married woman does not sign the deed with her husband, unless a tenant in common, or otherwise interested in the estate. The widow being entitled to dower in the land only of which her husband *died seized*. Deed must be acknowledged if in a foreign country, before a consul of the U. States, or notary public;—if in another State, before a Connecticut commissioner, a judge, justice of the peace, or notary public, under his seal;—if within the State, before a U. States or State judge, commissioner of the school fund, or county surveyor; and recorded by the register or town clerk.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto set my hand, &c.

## NEW YORK.

### *Execution of Deed.*

Deeds must be sealed. Unless acknowledged they must be proved by one subscribing witness, who must state his own

place of residence, and that he knows the person described in, and who executed the conveyance. Where the acknowledgment is made by the party in person, the officer taking the same must certify to the identity. Wife must be examined separately. Deeds must be acknowledged, or proved, if in a foreign country, before a judge of the highest court in Upper or Lower Canada; before a minister, charge d'affaires, or any consul of the United States, mayors of London, Dublin, Edinburgh, or Liverpool, and any person specially authorized by a commission under the seal of the supreme court of this State; — if in another State, before any justices of the supreme court and district judges of the U. States, the judges or justices of the supreme, superior, or circuit court of any state or territory, and mayors of cities; or before any officer authorized by the laws of such state to take proof or acknowledgment of deeds; — but in this case to entitle a written instrument to be read in evidence or recorded in this state, there shall be subjoined to the certificate of proof of acknowledgment signed by such officer, a certificate under the name and official seal of the clerk, register, recorder, or prothonotary of the county where such officer resides, specifying that such officer was at the time of taking such acknowledgment authorized to take the same, and that he is acquainted with his hand writing, and believes the signature to be genuine; or, the acknowledgment may be taken before a New York commissioner, in the city or county in which he resided at the time of his appointment — and the certificate must state the day, city, or town and county, within which the acknowledgment or proof was taken; and there shall be subjoined to it a certificate under the hand and seal of the Secretary of the State of New York, to the effect, that the commissioner was at the time of taking such proof or acknowledgment, authorized to take the same; that he is acquainted with the hand writing of such commissioner, and that he believes both the signature and seal of the said certificate to be genuine; — if within the State, acknowledgment can be taken before justices of the supreme courts, judges of county courts, mayors and recorders of cities, commissioners of deeds in cities, or justices of the peace in the towns for which they were appointed.

The full official title of the acknowledging officer should always be attached to his certificate. Deed must be recorded by the clerk of the county where estate is situated.

When any married woman, not residing in this state, joins with her husband in any conveyance of real estate situated within this state, her acknowledgment may be the same as if she were sole (*i. e.* unmarried), — her separate acknowledgment and private examination not being required.

*Form of Acknowledgment of Non-Resident.*

State of —, County of —, }  
 City of —, } ss.

Be it remembered, &c., personally appeared A. B. and C. his wife, to me known to be the individuals described in, and who executed the within [or above, or annexed] conveyance; and acknowledged that they executed the same for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal, at my office in the city of —, the day and year first above written.

*To be added to the above if the wife reside in N. York.*

And the said C. acknowledged, on a private examination by me made, apart from her husband, that she executed the said conveyance freely, and without any fear or compulsion of her said husband.

*Proof by Subscribing Witness, out of the State.*

State of —, County of —. }  
 City of —. } ss.

Be it remembered, &c., personally came S. H., to me known, who being by me duly sworn, did depose and say, that he resides in the city of —, in said county; that he knows A. B. and C. B., his wife, the individuals described in, and who executed the within conveyance, that they severally reside in the city of —, in the state of —, that he was present and saw them execute and deliver the within conveyance as their act and deed, and that he thereupon became a witness thereto.

In testimony whereof, I have hereunto set my hand and official seal, &c.

## NEW JERSEY.

*Execution of Deed.*

Deeds must be sealed with wax or wafer, but instruments for the payment of money may have a scrawl. Wife must be examined separately. Deed may be acknowledged or proved by one or more subscribing witnesses, if in a foreign country before any ambassador, public minister, charge d'affaires, secretary of legation, or other representative of the U. S.—if in another state, before a New Jersey commissioner, U. States or State judge, mayor, or chief magistrate of any city, under the seal of such

city, or before any judge of the court of common pleas, provided that a certificate, under the seal of the state, or county court in which it is made, that he is such officer, shall be annexed to such instrument, as evidence of his authority;—if within the State, before the chancellor, justice of supreme court, master of chancery, or any judge of the court of common pleas for any county, and recorded in the office of the clerk of common pleas.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, That on this      day of      , in the year one thousand eight hundred and      , before me B. H. C., Esq., a Commissioner of the State of New Jersey, appointed by the Governor thereof, to take the acknowledgment of deeds, and other instruments in writing under seal, to be used or recorded therein, personally appeared C. D. and Mary his wife, who I am satisfied are the grantors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Mary on a private examination, apart from her husband, before me, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed freely, without any fear, threats, or compulsion of her husband.

In witness whereof, I have hereunto set my hand and affixed my seal of office as commissioner aforesaid the day and year first above written.

## P E N N S Y L V A N I A .

### *Execution of Deed.*

Deeds may have a seal or scrawl. Two witnesses are required. Wife must be examined separately. The words *grant*, *bargain* and *sell*, shall be adjudged an express covenant to the grantee, his heirs and assigns. Deed must be acknowledged by one of the grantors, or proved by one of the subscribing witnesses; if in foreign countries, before any minister, consul or vice-consul, or notary public, certified under his official seal;—if in another State, before a Pennsylvania commissioner, or any officer or magistrate of such state authorized by the laws of said state to take acknowledgments of deeds, and other instruments in writing; and the proof of such authority shall be the certificate of the clerk of any court of record in such state, that the officer is duly qualified by law to take the same;—if within the State before one of the judges of the supreme court, or one of the justices

of the court of common pleas, alderman of a city, master of the rolls, and justices of the peace, and recorders of any county where the land lies. Deeds must be recorded within *six* months in the county where the lands lie.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Before me, the subscriber, Commissioner of the State of Pennsylvania, within and for the State of —, personally came the above named S. B., and Mary his wife, and acknowledged the above conveyance as and for their, and each of their act and deed, and desired that the same might be recorded as such; she the said Mary, being of full age, and by me, separate and apart from her said husband, duly examined, and the contents of the above conveyance fully made known to her, declared that she did voluntarily and of her own free will and accord, and without any coercion or compulsion on the part of her said husband, sign, seal, execute and deliver the same.

In testimony whereof, I have hereunto set my hand this &c.

## DELAWARE.

### *Execution of Deed.*

Deeds may have a seal, or a scrawl of the pen. Two witnesses are required. Wife must be examined separately. Deed must be acknowledged, if within the State, before the chancellor, a judge, notary public, or two justices of the peace; —if without the State, before a Delaware commissioner, judge of a court of record, or chief officer of any city or borough under his official seal;—and recorded in the county where the estate is situated within one year.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared the above named S. B., and Mary his wife, parties to this indenture, known to me personally, [or proved on the oath of G. H.] to be such, and severally acknowledged this indenture, deed, or conveyance, to be their deed; and at the same time, the said Mary being privately examined by me apart from her husband, further acknowledged that she executed the said indenture, deed, or conveyance, willingly, without compulsion or threats or fear of her husband's displeasure.

Given under my hand and seal of office, the day and year aforesaid.



## MARYLAND.

*Execution of Deed.*

Deeds must be *stamped* and a seal or scrawl used. Wife must be examined separately.

Deed must be recorded in the county where the estate is situated. Deed must be acknowledged, if within the State, before a chief or associate judge, or two justices of the peace, who usually attest the execution of the same; — if without the State, before a Maryland commissioner, the federal judges, or judge of a court of record, (the clerk certifying under the seal of the court that the person taking the acknowledgment is a duly commissioned judge); — if in a foreign country before consuls of the United States and vice-consuls.

*Form of Acknowledgment.*

State of —, }  
City of —. } ss.

Be it remembered, and it is hereby certified, that on this day of —, in the year of our Lord one thousand eight hundred and fifty—, before me, the subscriber, Commissioner of the State of Maryland, duly commissioned and qualified to take depositions, acknowledgments, &c., in the State of —, personally appeared A. B., and C. B. his wife, they being known to me (or being satisfactorily proven by oral testimony, under oath, received by me), to be the persons named and described as, and professing to be, the party of the first part to the foregoing deed, and did severally acknowledge the same to be their respective act and deed. And the said C. B., having signed and sealed said deed before me, out of the presence and hearing of her husband, and being by me also examined, out of the presence and hearing of her said husband, “whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of, or of ill usage by, her husband, or by fear of his displeasure,” declareth and saith that she doth.

In testimony whereof, I hereunto subscribe my name, and set my seal of office, on the day and year first above written.

## VIRGINIA.

*Execution of Deed.*

Deeds must have a seal or scrawl. Wife must be examined apart from her husband. Deed may be acknowledged, or proved by two witnesses, — if out of the State, before a Virginia commissioner, a notary public, clerk of a court, or justice of the peace, (except that the acknowledgment of a married woman must be taken before two justices, both of whom

must be present) ; — if within the State, before a justice of the peace, notary public, clerk of any county or corporation court, where deed is to be recorded.

Deed to be recorded in the corporation or county where the land lies.

### *Form of Acknowledgment.*

State of —, County of —, } ss.  
City of —.

I, B. H. C., a commissioner appointed by the Governor of the State of Virginia, for the said State (or territory) of —, do certify, that C. D., whose name is signed to the writing above (or hereto annexed) bearing date on the — day of —, has acknowledged the same before me in my State (or territory) aforesaid.

Given under my hand, this — day of, &c.

### *Certificate of Privy Examination.*

State of —, County of —, } ss.  
City of —.

I, B. H. C., a Commissioner appointed by the Governor of the State of Virginia, for the said State of —, do certify that E. D., the wife of C. D. whose names are signed to the writing above (or hereto annexed) bearing date on the — day of —, personally appeared before me, in the county and state aforesaid; and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said E. D., acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand, this — day of, &c.

## NORTH CAROLINA.

### *Execution of Deed.*

Deeds must have a seal or scrawl. Witnesses not necessary. Wife must be examined apart from her husband. Deed must be acknowledged, if out of the State, before a North Carolina commissioner, or judge of supreme, superior or circuit court, and an attestation of such acknowledgment, by the judge, with a certificate of the governor of the state or territory, that the judge before whom said acknowledgment was taken, was one of the judges of the aforesaid courts of law, must be affixed to the deed ; — if within the State, before a judge of the supreme, superior, or county court where the land lies ; and recorded in the Registry of the said county.

*Form of Acknowledgment.*

State of —, }  
County of —. } ss.

On the      day of      , in the year of our Lord one thousand eight hundred and fifty      , before me, A. B., a Commissioner appointed by the State of North Carolina, in and for the State of      , personally appeared C. D., and E. D. his wife, grantors named in the annexed (or foregoing) deed, and severally acknowledged the execution thereof as their act and deed.

And the said E. D. being by me privately examined, separate and apart from her husband, touching the execution thereof, and it appearing that she had executed the same freely, and of her own will and accord, and without any force, fear, or undue influence of her said husband, and that she doth voluntarily assent thereto, — let it be recorded.

In witness whereof, I have hereunto set my hand and seal &c.

## SOUTH CAROLINA.

*Execution of Deed.*

Deeds must have a seal or scrawl. Two witnesses are required. Wife must be examined separately. Deed may be acknowledged, if out of the State, before a South Carolina commissioner; — within the State, it may be proved before any magistrate, judge, or justice of the peace. The practice in the State is to prove the execution of a deed by a subscribing witness. Deed to be recorded by the register of the district.

*Form of Acknowledgment before a Commissioner.*

State of —, }  
County of —. } ss.

I, B. H. C., a Commissioner in and for the State of      , appointed by the Governor of the State of South Carolina, to take the acknowledgment and proof of deeds and other instruments of writing to be used or recorded in said State of South Carolina, &c., do hereby certify that A. B. did this day appear before me, and acknowledged that he did sign, seal, and deliver the within conveyance, unto the within named E. F., for the uses and purposes therein expressed.

Given under my hand and seal this      day of      A. D. 18—.

*Form of Proof of Deed by subscribing Witness.*

State of —, }  
County of —. } ss.

On the      day of      , in the year of our Lord one thousand eight hundred and fifty—, before me, B. H. C., &c., personally appeared J. D., who being duly sworn, made oath, that he and R. R. saw C. D., the grantor in the above (or within) convey-

ance, sign, seal, and as his act, deliver the above conveyance, and that they, the said J. D. and R. R., subscribed their names as witnesses thereto.

Sworn before me the day and year first above written.

*Form by Wife, releasing her Dower.*

State of —, }  
County of —. } ss.

I, B. H. C., a Commissioner, &c., do hereby certify, unto all whom it may concern, that M. D., the wife of the within named C. D., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named E. F., his heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released. M. D.

Given under my hand and seal this      day of      , 185—.

*Form of Renunciation of an Inheritance.*

State of —, }  
County of —. } ss.

I, B. H. C., a Commissioner, &c., do hereby certify unto all whom it may concern, that M. D., the wife of the within named C. D., did this day appear before me, and upon being privately and separately examined by me, did declare that she did actually join her husband in executing the within release, and that the same was positively and *bona fide* executed, at least seven days before this her examination, and that she did then, and still does freely, voluntarily, and without any manner of compulsion, dread, or fear, of any person or persons whomsoever, renounce, release, and forever relinquish, unto the within named E. F., his heirs and assigns, all her estate, interest, and inheritance in all and singular the premises within mentioned and released. M. D.

Given under my hand and seal this      day of      , A. D. 185—.

## GEORGIA.

### *Execution of Deed.*

Deeds must have a seal or scrawl of the pen. Two witnesses are required. Wife must be examined separately. Deed must be acknowledged, if in a foreign country, before a consul or vice consul of the U. States; — if out of the State, it may be acknowledged, or proved by one of the subscribing witnesses, before a Georgia commissioner, a governor, chief justice, mayor, or judges of the federal courts, — if within the State, before a justice of the peace, or a justice or associate justice, or a clerk of the court; and registered by the clerk of the court within one year.

### *Form of Acknowledgment.*

State of —, }  
City of —. } ss.

Be it remembered, that on the      day of      , 185—, before me, B. H. C., a Commissioner of the State of Georgia, &c., A. B. personally appeared, and M. his wife, to me known to be the persons described in, and who executed the foregoing

deed of conveyance, and severally acknowledged, that they executed the same; and the said Mary, the wife of the said A. B., on a private examination, acknowledged and agreed that she did, of her own free will and accord, subscribe, seal, and deliver the said deed, with an intention thereby to renounce, give up, and forever quit claim her right of dower and thirds, and all her other interest of, into, and to, the lands and tenements therein mentioned.

In testimony whereof, I have hereunto set my hand this &c.

## MISSISSIPPI.

### *Execution of Deed.*

Deeds must be sealed. Two witnesses are required. Wife must be examined separately. Deed must be acknowledged, or proved by one or more of the subscribing witnesses, if in a foreign country, before any court of law, mayor, or chief officer of any city, borough or corporation, certified and authenticated in the usual manner; if in any other State, before a Mississippi commissioner, judges of the federal courts, or any judge or justice of the supreme or superior courts of any state;—if within the State, before a judge of the supreme court, justice of the peace, notary public, or justice of a county court; and recorded with the clerk of the county court where the land lies.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Personally appeared before me, B. H. C., a Commissioner of the State of Mississippi, duly appointed by the Governor thereof, to take the proof and acknowledgment of deeds and other instruments of writing, under seal, in \_\_\_\_\_, to be used or recorded in the said State of Mississippi, the within (or above) named A. B., and M. B. his wife, who severally acknowledged that they signed, sealed, and delivered the foregoing deed [or instrument] on the day and year therein mentioned, as their act and deed. And the said M. B., did, moreover, on a private examination made of her by me, apart from her husband, acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

In testimony whereof, I have hereunto, &c.

## LOUISIANA.

### *Execution of Deed.*

In Louisiana two free male witnesses are required, who must be at least fourteen years of age. The transfer of real proper-

ty, is effected, not by deed, as in the other States, but by a proceeding called "the Act of Sale." It is the agreement of the parties for the sale and purchase of the property, entered into by them and reduced to writing and signed by all.

These acts of Sale are divided into *private* and *authentic* acts. *Private* when under the hand of the parties only. *Authentic* when executed before a Notary Public; which is done by the parties appearing before the Notary, and his reducing the terms of the agreement to writing, and signing it together with all the parties in the presence of two witnesses, *free male*, and aged, at least fourteen years, or of three witnesses, if the party be blind. If the party does not know how to sign, the Notary must cause him to affix his mark to the instrument.

The act of Sale, when *Private*, must be registered in the Parish where the property lies, by the Register thereof. If the act of Sale be *Authentic*, it shall be sufficient if its registry be made on a certificate presented from the Notary who shall have passed the said act.

### *Form of Act of Sale, with Wife's Renunciation.*

State of —, }  
City of —. } ss.

Be it known, that this day, before me, A. B., a notary public, in and for the city of —, State of —, aforesaid, duly commissioned and qualified, personally came and appeared C. D., gentlemen, of the city of —, and Commonwealth (or State) of —, but now temporarily resident of the city of —, aforesaid, who declared that for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties unto E. F., of this city, the said grantee, being here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof; a certain lot of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and appurtenances thereto belonging, situated in the faubourg —, in the first district of —, &c., [here give the measurements in French measure, or otherwise, with description and boundaries.]

To have and to hold the said property unto the said purchaser, his heirs and assigns forever. And the said vendor for himself and his heirs, the said property herein conveyed to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the legal claims of all persons whomsoever. And the vendor does moreover subrogate the said purchaser to all the rights and actions of warranty, which he now has or may have against his own vendor, or against the vendors of his vendor, fully authorizing the said purchaser

to exercise the said rights and actions in the same manner as, he himself might or could have done.

This sale is made and accepted for and in consideration of the sum of *seven thousand two hundred and fifty dollars*, in full payment, which the said vendor acknowledges to have received from the said purchaser, in ready current money, delivered in the presence of the undersigned notary and witnesses, for which a full acquittance is hereby granted.

And now personally came and appeared Mrs. M. D., of lawful age, the wife of said C. D., who did declare unto me, notary, that it is her wish and intention, to release in favor of the said E. F., his heirs and assigns, the property herein described, from the matrimonial, dotal, paraphernal and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with the said C. D., or otherwise.

Whereupon, I, the said notary, did inform the said Mrs. D., apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law a legal mortgage on the property of her said husband; *first*, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; *secondly*, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected; *thirdly*, for nuptial presents; *fourthly*, for debts by her contracted with her said husband; and *fifthly*, for the amount of her paraphernal property alienated by her, and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said Mrs. D., did thereupon declare unto me, notary, that she was fully aware of, and acquainted with the nature and extent of the matrimonial, dotal, paraphernal and other rights and privileges thus secured to her by law on the property of her said husband, and that, availing herself of the rights secured to her by the second section of an act passed by the legislature of the State of Louisiana, authorizing wives to make valid renunciations, &c., approved on the twenty-seventh day of March, eighteen hundred and thirty-five, she nevertheless, did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever, to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said husband C. D., being now present, aiding and authorizing his said wife, in the execution of these presents, she the said wife did again declare that she did and does here-

by make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal and other rights, claims, and privileges, in favor of the said E. F., binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, in the city of —, in the presence of B. W. and C. L., witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this — day of —, in the year one thousand eight hundred and fifty-seven.

|              |       |       |         |
|--------------|-------|-------|---------|
| Witnesses, { | B. W. | C. D. | [L. s.] |
|              | C. L. | M. D. | [L. s.] |
|              |       | E. F. | [L. s.] |

[L. s.] A. B. *Notary Public* (or, *Louisiana Commissioner*.)

*Letter, or Power of Attorney.*

|                           |       |
|---------------------------|-------|
| United States of America. | } ss. |
| State of .....            |       |
| City of .....             |       |

Be it known, that this day before me, A. B., a notary public in and for the city of ....., and Commonwealth (or State) of ....., duly commissioned and qualified, and in presence of the Witnesses hereinafter named and undersigned, personally came and appeared C. D., who declared, That he had made and appointed, and by these presents did make, nominate, ordain, authorize, constitute, and appoint, and in his place and stead depute and put E. F. to be his true and lawful attorney in fact, general and special, giving, and by these presents granting unto the said attorney, full power and authority for him in his name and behalf and to his use; to conduct, manage, and transact all and singular his affairs, business, and concerns, in ... of whatsoever nature and kind, without exception, or reservation whatsoever; [*here state fully and with great particularity the nature of the business to be performed.*]

And generally to do and perform all and every act, matter and thing whatsoever, as shall or may be requisite and necessary touching or concerning the affairs, business, and concerns of the said C. D., as fully, amply, and effectually, and to all intents and purposes with the same validity as if all and every such act, matter, or thing, were or had been herein particularly stated, expressed, and especially provided for, or as the said C. D. could or might do if personally present; also with full power of substitution and revocation, the said C. D. hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed in my office, in the city of ....., in the presence of B. W. and C. L., witnesses, of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this .... day of ...., in the year one thousand eight hundred and fifty ....

(*Signed and Sealed as above.*)

## TEXAS.

### *Execution of Deed*

Deeds must be sealed, but a scrawl of a pen may be used instead, if it is recognized in the instrument as having been used in place of a seal. Two witnesses are required. Wife must



be examined separately. Deed must be acknowledged, or proved by one subscribing witness— if in a foreign country before a minister, charge d'affaires, or consul of the U. States;—if in another State, before a judge of any court of record having a seal, which must be affixed to the certificate, or a Texas commissioner;—if within the State, before a notary public, or clerk of a county court. Deeds are recorded by the clerk of the county court where the land lies.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Before me, B. H. C., Commissioner of the State of Texas, duly appointed and commissioned by the Governor thereof, for the State of • , and authorized to take the acknowledgment of deeds, &c., personally appeared A. B., and C. B. his wife, whose names appear to be subscribed to the foregoing deed to E. F. bearing date the      day of      , 185—, and acknowledged that they had executed the same for the consideration and purposes therein stated. And the said C. B. wife of said A. B., having been examined by me, privily and apart from her husband, and having the same fully explained to her, she, the said C. B., acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wishes not to retract it.

To certify which I hereto sign my name, and affix my seal, this      day of      , A. D., 185—.

## TENNESSEE.

### *Execution of Deed.*

Deeds may have a seal or scrawl. Wife must be examined separately. Deed must be acknowledged or proved by two subscribing witnesses, if in a foreign country, before any minister or consul of the U. S. under his official seal; if in another State, before a Tennessee commissioner, or a notary public, under his official seal, or before a judge of the supreme or superior court, or any court of record, and the judge shall certify the same under his hand, and the clerk shall certify under his seal of office, as to the official character of the judge; and by the presiding judge as to the official character of the clerk;— if in the State, before the clerk of any county court; and recorded in the office of the register of the county.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared the above named A. B., and C. B. his wife, with whom I am personally acquaint-

ed, and acknowledged the foregoing instrument to be their act and deed. And the said C. B., privately and apart from her husband, acknowledged that she did freely, voluntarily, and understandingly, sign, seal and deliver the said deed, without compulsion or restraint from her said husband, and for the purposes therein expressed.

In testimony whereof, I have hereunto, &c.

## ARKANSAS.

### *Execution of Deed.*

Deeds may have a seal or scrawl. Two witnesses are required. Wife must be examined separately. Deed may be acknowledged, if in a foreign country, before any court, or chief officer of a city or town having an official seal;—if in another State, before an Arkansas commissioner, U. States court, or any court having a seal, or the clerk of any such court, or chief officer of any city or town having an official seal;—if in the state, before the supreme or circuit court, or either of the judges, justices of the peace or notaries public; and recorded by the recorder of the county where the land lies. If the grantor be not personally known to the officer, he must be satisfactorily proven.

### *Form of Acknowledgment.*

State of —, }  
County of —, } ss:

Be it known, &c., personally came and appeared A. B., the grantor in the above deed, to me personally well known, and acknowledged that he voluntarily executed and delivered the foregoing deed, for the uses and purposes and consideration therein expressed, and desired the same to be certified.

And on the same day, and at the same place, also came personally before me, C. B., wife of said A. B., of full age, and to me well known, who being there by me examined, in the absence of her said husband, and the contents of the foregoing deed being by me fully explained to her, she declared that she had of her free will executed the same for the uses and purposes therein expressed, without compulsion or undue influence of her said husband, and desired the same to be certified.

In testimony whereof, I have hereunto set my hand, &c.

## ILLINOIS.

### *Execution of Deed.*

Deeds may have a scrawl of a pen for a seal. Two witnesses are usual. Wife must be examined separately. No law of

this State prescribes the form of a deed, but one made in the usual form containing the words *grant*, *bargain* and *sell* shall be adjudged an express covenant to the grantee, his heirs and other legal representatives. Deed may be acknowledged, if in a foreign country, before a U. States consul, who shall certify under his official seal, that the deed is executed in conformity with the law of the country ;—if in another State before a judge or justice of the supreme or district courts of the United States, judge or justice of the supreme, superior, or circuit courts of any state or territory, and justices of the peace ; and such deed may be acknowledged in conformity with the laws of such state or territory, *provided*, that any clerk of a court of record under his hand and seal shall certify that such deed is executed and acknowledged in conformity with the laws of such state or territory. No judge or other officer shall take the acknowledgment of any person, unless such person be personally known to him to be the real person, or shall be proved to be such by a credible witness. And the officer taking the acknowledgment shall in his certificate state that such person was personally known to him, or that he was proved to be such by a credible witness (naming him) ; and when the deed is proved by subscribing witnesses, the officer must ascertain that the person who offers to prove the same, is a subscribing witness, either from his own knowledge, or a credible witness—and shall grant a certificate to that effect ; or deeds may be acknowledged or proved before a mayor of a city, clerk of a court of record, or notary public, under their official seals ;—or before an Illinois commissioner, and there shall be subjoined or affixed to the certificate of the commissioner, a certificate under the hand and seal of the Secretary of State that such commissioner was, at the time of taking such proof or acknowledgment, authorized to take the same, and that the Secretary is acquainted with the hand-writing of such commissioner, or has compared the signature to such certificate with the signature deposited in his office, and that he believes both the signature and seal of the said certificate to be genuine. Deed must be recorded in the county where the land lies.

### *Form of Acknowledgment.*

State of —, County of —, } ss.  
City of —.

Be it remembered, that on this      day of      , in the year of our Lord one thousand eight hundred and fifty—, in the city and county aforesaid, before me, B. H. C., a commissioner residing in said county, duly appointed and commissioned by the Governor of the State of Illinois, to take the acknowledgment and proof of the execution of deeds and other instruments in writing under seal, to be used or recorded in said State of Illinois, per-

sonally appeared A. B., and C. B. his wife,\* who are personally known to me, to be the persons whose names are subscribed to the foregoing deed as having executed the same, and acknowledged that they executed the same, for the uses and purposes therein expressed. And the said C. B., wife of the said A. B., being of lawful age, and having been by me, separate and apart from her said husband, examined, and the contents of the said deed fully made known and explained to her, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely and without compulsion of her said husband.

In witness whereof, I have hereunto set my hand and affixed my official seal as Commissioner of the said State of Illinois, at my office in the city of Boston, in the county and state aforesaid, this      day of      , A. D., 185—.

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\* Or, who are proven to me on the oath of G. H. a credible witness.

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## MISSOURI.

### *Execution of Deed.*

Deeds may have a scrawl of the pen instead of a seal. Wife must be examined separately and apart from her husband. The words *grant*, *bargain* and *sell*, shall, unless restrained by express terms, be construed to be express covenants on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns. Deed may be acknowledged or proved, by one subscribing witness, if in a foreign country, before any court having a seal, or mayor of any city under its official seal;—if in another State, before any Missouri commissioner or court having a seal, or the clerk of such court;—if within the State, before some court having a seal, or some judge, justice of the peace or notary public. The person acknowledging must be personally known to the officer taking the same, to be the person whose name is subscribed to the deed, or he shall be proved as such, by at least two credible witnesses, which shall be stated in the certificate.

### *Form of Acknowledgment.*

State of — }  
County of — } ss.

Be it remembered, &c., came A. B., and C. B. his wife,† who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and they each acknowledged the same to be their act and deed for the purposes therein mentioned. And the said C. B., being by me first made acquainted with the contents of

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† When not known, say: who are proven to me by the testimony under oath of G. H. and I. K., two credible witnesses.

said conveyance, acknowledged on an examination, separate and apart from her husband, that she executed the same, [and relinquished her dower in and to the real estate therein mentioned,]\* freely, and without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand, &c.

\* When in right of the wife, insert the following instead of what is inclosed in brackets: "and released and conveyed all her right and interest."

## FLORIDA.

### *Execution of Deed.*

Deeds must be sealed. Two witnesses are required. Wife must be examined separately. Deed must be acknowledged, or proved by one of the subscribing witnesses, if out of the State, before a Florida commissioner, or any of the federal judges or justices; — if within the State, before some judicial officer, or the officer authorized to record the conveyance; and recorded in the Registry of Deeds, where the land lies.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B., and C. B. his wife, being known to me to be the individuals who executed the within deed,\* and acknowledged that they did execute the said deed for the purposes expressed therein.

And the said C. B., wife of the said A. B., being by me first privately examined, separate and apart from her said husband, and having the said deed also fully explained to her in said examination, acknowledged that the relinquishment and renunciation of dower, contained in the foregoing conveyance, executed by her, was, and is made freely, voluntarily, and without any compulsion, restraint, apprehension, or fear of, or from her said husband.

In testimony whereof, I have hereunto set my hand, &c.

\* Or, "was proved to my satisfaction to be the individuals who executed the said deed."

## ALABAMA.

### *Execution of Deed.*

Deeds must have a scrawl or seal, but all writings which purport to be sealed, are to be taken as sealed instruments, and have the same effect as if the seal of the parties were affixed. Deeds unless acknowledged, must be proved by two

witnesses. Wife's conveyance is void unless she acknowledge the deed or execute it in the presence of two witnesses. Deed must be acknowledged, if in a foreign country before any diplomatic, consular, or commercial agent of the United States, judge of any court of record, mayor, or chief magistrate of any city, town, borough, or county, or notaries public;—if out of the State, before an Alabama commissioner, judges or clerks of any federal court, judges of any court of record, notaries public, or justices of the peace;—if within the State, before judges of the supreme and circuit courts, and their clerks, chancellors, judges of probate, justices of the peace, and notaries public.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

I, B. H. C., a commissioner, &c., [or, *justice of the peace of the county aforesaid,*] hereby certify that A. B., whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. And at the same time personally appeared the above-named G. B., wife of said A. B., who being by me examined privately and apart from her husband, acknowledged that she signed, sealed, and delivered the said conveyance as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this      day of      , 185 .

### *Certificate of Proof of a Subscribing Witness.*

State of —, }  
County of —. } ss.

I, B. H. C., a commissioner, &c., hereby certify that A. B., a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that S. B., the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand and seal this      day of      , 185 .

## OHIO.

### *Execution of Deed.*

Deeds must be under seal or scrawl. Two witnesses are required. Wife must be examined separately. Deeds acknowl-

edged out of the State before an officer authorized to take acknowledgment of deeds by the laws of such state, territory or country, and certified by such officer in his official character, shall be valid, if executed in conformity with the laws of the state, territory, or country in which the deed is made, or they may be acknowledged before Ohio commissioners;—if within the State, before the judge of the supreme court, or the court of common pleas, a justice of the peace, notary public, mayor, or chief officer of an incorporated town or city; and recorded in the county where the land lies.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B. and C. B. his wife, to me personally well known, and acknowledged the signing and sealing of the foregoing instrument to be their voluntary act and deed. I further certify, that I did examine the said C. B., separate and apart from her said husband, and did then and there make known to her the contents of the foregoing instrument, and upon that examination she declared she did voluntarily sign, seal, and acknowledge the same, and that she was still satisfied therewith.

In testimony whereof, I have hereunto set my hand, &c.

## KENTUCKY.

### *Execution of Deed.*

No seal or scrawl is requisite. Wife must be examined separately. Deed may be acknowledged, or proved by witnesses, if in a foreign country, before any minister or consul of the U. States;—if in another State, before a Kentucky commissioner, a judge, a justice of the superior or inferior courts, and certified under the seal of his court, or a clerk of a court, or mayor of a city, certified under his official seal;—if within the State, before the clerk of the county court. Deed may be proved by two subscribing witnesses, or by one if he can prove the attestation of the other; and recorded within eight months if in the State, twelve months if in any other State, and eighteen months if in a foreign country.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

I, B. H. C., a Commissioner of Deeds for the State of Kentucky, duly appointed and commissioned by the Governor thereof for the state of —, and authorized to take the acknowledgment of deeds and other writings, do certify, that this instrument of writing from C. D. and his wife E. D., was

this day produced to me by the parties, and was then and there acknowledged by the said C. D., to be his act and deed; and the contents and effect of the instrument being explained to the said E. D., by me, separately and apart from her husband, she thereupon declared, that she did freely and voluntarily execute and deliver the same, to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office, this                      of, &c.

## MICHIGAN.

### *Execution of Deed.*

Deeds may have a scrawl of the pen instead of a seal. Two witnesses are required. Wife must be examined separately. When any woman *not* residing in this state, shall join with her husband in any conveyance of real estate situated within this state, the conveyance shall have the same effect as if she were *sole*, and the acknowledgment and proof of execution of such conveyance by her, may be the same as if she were *sole*. Deeds must be executed, if in a foreign country, according to the laws of that country, and acknowledged before a minister, or consul of the U. States, and certified thereon, under his hand, and if before a notary, under his official seal;—if in another State, according to the laws of that State, before a Michigan commissioner, notary public, justice of the peace, or other officer authorized to take acknowledgments. Unless acknowledged before a commissioner, the certificate of the clerk of a court of record of the county in which the acknowledgment is taken, must be attached to the deed, stating the official character of the person taking the acknowledgment, and “that he believes the signature of the person subscribed thereto, to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory, or district;” \* if within the state, before any judge, or commissioner of any court of record, notary public, justice of the peace, or master of chancery; and recorded in the office of registry of deeds in the county where the land lies.

### *Form of Acknowledgment.*

State of —,                      }  
County of —. } *ss.*

Be it remembered, &c., personally appeared A. B., and Mary his wife, and severally acknowledged that they had executed the within instrument, for the uses and purposes therein mentioned.

[And the said Mary, on a private examination, apart from her husband, acknowledged that she executed the within instrument freely, and without fear or compulsion from any one.]

\* See Certificate on page 11.



And I further certify, that the persons who made the said acknowledgment are known to me to be the individuals described in and who executed the within instrument.

In testimony whereof, I have hereunto set my hand, &c.

## INDIANA.

### *Execution of Deed.*

Deeds must be sealed. Deed must be acknowledged, or proved by a subscribing witness.\* Wife need not be examined separately. Deed may be acknowledged, if in a foreign country, before any minister, charge d'affaires, or consul of the United States;—if in another State, before an Indiana commissioner, supreme or circuit court, or court of common pleas, notary public, justice of the peace, mayor or recorder of a city under his official seal; and the acknowledgment or proof when made before a judge, or justice of the peace, must be *certified* to by the clerk of a court of record; and the clerk must attest such certificate by the seal of his court;—if within the State, before a judge, justice of the peace, notary public, or mayor of a city; and recorded in the recorder's office of the county.

### *Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B., and C. B. his wife,† to me well known as the same persons described in and who executed the foregoing deed, and they severally acknowledged the execution of the same. In testimony whereof, &c.

\* See Introduction for *form* of certificate of subscribing witness.

† Or, was proven to me on the oath of G. H., a credible witness.

## CALIFORNIA.

### *Execution of Deed.*

A seal or scrawl with a pen is required. Wife must be examined separately. Deed may be acknowledged, if in a foreign country, before some judge, or clerk of a court having a seal, a notary public, minister, consul, or commissioner of the U. States; if in another State, before a California commissioner, judges or clerks of any U. States or State court, having a seal; if in the State, before some judge or clerk of a court having a seal, or a notary public, or justice of the peace in the county where the land lies. Where the deed is acknowledged, no subscribing witnesses are required. The party making the acknowledgment must be personally known to the officer to be

the person whose name is subscribed to the deed, or must be proved by the oath of a credible witness.

*Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B., and C. B. his wife,\* known to me to be the persons described in, and who executed the foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned. And the said C. B., being made acquainted by me with the contents of said conveyance, acknowledged, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily without fear, or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. In testimony whereof, &c.

I O W A .

*Execution of Deed.*

No seal or scrawl is necessary to the validity of a deed. Deed may be acknowledged, or proved by witnesses,—if in another State, before an Iowa commissioner, a court of record, or an officer holding the seal thereof, or notary public;—if within the State, before any court having a seal, justice or clerk thereof, a justice of the peace, or notary public.

When acknowledged without the State the certificate of acknowledgment must state the title of the court or person before whom the acknowledgment was taken; that the persons were known to the officer taking the same, to be the identical persons whose names are affixed to the deed as grantors, or that such identity was proved by at least one credible witness,—naming him. Deed must be recorded with the recorder in the county.

*Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B. and C. B. his wife, personally known to me to be the identical persons whose names\* are affixed to the foregoing deed as grantors, and acknowledged that they executed and delivered the same as their voluntary act and deed.

In testimony whereof, &c.

\* When not known, say: "who are satisfactorily proved to be the persons described in and who executed the within conveyance by the oath of E. F., a competent and credible witness for that purpose by me duly sworn."

## WISCONSIN.

*Execution of Deed.*

Deed may be under seal or scrawl. Two witnesses are required. Wife need not be examined. Deed may be acknowledged, if in a foreign country, before a minister or a consul of the U. States;—if in another State, before a Wisconsin commissioner, judge of a court of record, notary public, justice of the peace, master of chancery, or other officer authorized to take acknowledgments of deeds, &c.; if proved by a subscribing witness, he must be personally known to the officer, and the certificate must state the fact. In cases where the acknowledgment is not taken before a commissioner, there shall be attached to the deed a certificate of the clerk of a court of record of the county, under his official seal, that the person whose name is subscribed to the certificate of acknowledgment, was, at the date thereof, such officer as he is therein represented to be, that he believes the signature to be genuine, and that said deed is executed and acknowledged according to the laws of such state, territory or district;—if within the State, before any judge or commissioner of a court of record, notary public, or justice of the peace.

*Form of Acknowledgment.*

State of —, }  
County of —. } ss.

Be it remembered, &c., personally appeared A. B., and C. B. his wife, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof, by them sealed and subscribed, to be their free act and deed, for the uses and purposes therein mentioned.

In witness whereof, &c.

## MINNESOTA.

*Execution of Deed.*

Deed may have a scrawl or seal. Two witnesses are required. Wife must be examined separately. Deed may be acknowledged, if in another state or territory, before a Minnesota commissioner, judge of a court of record, notary public, justice of the peace, or other officer authorized by the laws of such state or territory, to take acknowledgments of deeds. Unless the acknowledgment is taken before a commissioner, deed must have attached thereto the certificate of a Clerk of a court of record [same as Michigan.]

Form of acknowledgment same as Michigan.

## FORMS OF DEEDS.

[See *Forms of Deeds, Mortgages, Bonds, Contracts, Releases, Letters of Attorney, &c.*, in "*Business Man's Assistant*."] —

### *Deed to a City.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of the city of . . . , in the county of . . . , in the State of . . . , in consideration of . . . dollars to me paid by the city of . . . , the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey to the said city of . . . , its successors and assigns forever, all that parcel of land, situated in . . . , bounded and described as follows, to wit.: [*Here describe the premises.*]

The above granted premises were taken to widen . . . street by a Resolve of the mayor and aldermen of the said city of . . . , passed the . . . day of . . . , A. D. 185—, reference to which is hereby had, and are to be used for the purposes of a public street of said city of . . . ; and the above consideration has been received in full satisfaction and discharge of all claims and demands for damages, costs, expenses and compensation, by reason of said taking. And I do, for myself, my heirs, executors and administrators, covenant and agree, to and with the said city of . . . , its successors and assigns, to indemnify and forever save harmless the said city of . . . , its successors and assigns, against any and all claims and demands of any person or persons whatsoever, for damages, costs, expenses or compensation, for or on account of the granted premises, or the taking thereof. The said premises are delineated upon a plan, made by E. F., surveyor, and deposited in the office of the said mayor and aldermen, being plan No. . . . in the . . . volume of city plans.

To have and to hold, the aforegranted premises with the privileges and appurtenances thereto belonging to the said city of . . . , its successors and assigns, in fee simple forever. And I the said A. B., for myself and my heirs, executors and administrators, do covenant with the said city of . . . , and its successors and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances, that I have good right to sell and convey the same to the said city of . . . , its successors and assigns forever, as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said city of . . . , and its successors and assigns forever, against the lawful claims and demands of all persons.

In witness whereof I, the said A. B., and Mary my wife, in token of her release of all right of dower in the granted premises, have hereunto set our hands and seals this . . . day of . . . , in the year of our Lord one thousand eight hundred and fifty . . . .

*Signed, sealed and delivered in presence of*

A. B. [L. s.]  
M. B. [L. s.]

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### *Deed by the Inhabitants of a Town.*

KNOW ALL MEN BY THESE PRESENTS, That the Inhabitants of . . . , in the county of . . . , and State of . . . , in consideration of . . . dollars, to them paid by C. D., of . . . , the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey to the said C. D., his heirs and assigns, all that parcel of land and estate, situate in . . . , commonly called . . . , which is described and bounded as follows, to wit.: [*here describe the land.*]

To have and to hold the aforegranted premises with the privileges and appurtenances thereto belonging, to the said C. D., his heirs and assigns, to his and their use and behoof forever.

And the said inhabitants, for themselves, and their successors, do covenant with the said C. D., his heirs and assigns, that they, the said inhabitants, are lawfully seized in fee of the aforegranted premises; that they are free of all incumbrances; that they have good right to sell and convey the same to the said C. D. as aforesaid; and that they and their successors, will warrant and defend the said premises, to the said C. D., his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, the said Town, hath caused its common seal to be hereunto affixed, and these presents to be signed by its Treasurer, hereto duly authorized, this .... day of ...., in the year one thousand eight hundred and ....

The Town of .... } L. S.  
by A. B. its Treasurer. } of Town.

*Signed, sealed and delivered in presence of*

*Deed by Tax Collector.*

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME: I, A. B., treasurer and collector of taxes for the town of W., in the county of ...., and State of ...., for the year A. D. one thousand eight hundred and fifty ...., legally chosen and sworn, send greeting.

Whereas, the Assessors of the town of W. aforesaid, have assessed C. D. the sum of .... dollars and .... cents, for a tax as owner of land, hereinafter described, in said W. in the list of assessments which said Assessors have committed to me to collect; and whereas no person has appeared to discharge the said tax, although I have complied with all the provisions of the law respecting the collection of taxes and sale of real estate for taxes assessed thereon and unpaid, and have demanded the same of the said C. D., the reputed owner of said real estate, and have advertised for the space of three weeks successively in the ...., a public newspaper published in said W., the time and place of the sale of the real estate whereon the said taxes were assessed for the payment of said taxes, and the name of the reputed owner of such real estate so taken for taxes, (the last publication of which said advertisement was one week previous to the sale of said real estate,) and have posted a copy of said advertisement in W., and upon the premises thus advertised, three weeks previous to the sale thereof.

Therefore, know ye, that I, the said A. B., Treasurer and Collector of Taxes as aforesaid, in consideration of .... dollars, to me paid for the discharging of said taxes and intervening charges, by E. F., of ...., the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto him, the said E. F., his heirs and assigns forever, the following described real estate, being the land taxed as aforesaid, to wit: *[here describe the premises.]* the same having been struck off to the said E. F., he being the highest bidder therefor, at a public auction legally notified and held at the office of the Collector in said W., on the .... day of ...., A. D. 1857.

To have and to hold the same to the said E. F. his heirs and assigns, to his and their use forever, subject, however, to the right of redemption of the owner or proprietor thereof, at any time within two years from the day of sale. And I do covenant with the said E. F., his heirs and assigns, that I gave notice of the intended sale of said land according to law, and that I have observed the directions of the law in all respects in the premises.

In witness whereof, I have hereunto set my hand and seal this .... &c.

A. B. Treasurer of the town of ..... [L. S.]

*Signed, sealed and delivered in presence of*

*Certificate of Witness.*

I, C. W. of B., in the County of S., and State of M., being a disinterested person in the premises, hereby certify that on the twenty-third day of July, A. D. 1858, at B. aforesaid, S. B., Treasurer and Collector of Taxes for the said town for the year 1858, in my presence posted up conspicuously at the Town Hall, and at the B. Ferry Toll House, being public and convenient places within the precinct of said S. B., three weeks before said sale, and also on the same day, upon each of the several houses and lots of land, mentioned in the annexed notification of sale, a copy of said annexed advertisement.

C. W. [L. S.]

B—, August 23, 1858.

*Commonwealth [State] of M—.*

S—, ss.

Then personally appeared the above named C. W., and made oath that the foregoing Certificate, by him subscribed, is true.

Before me,

T. C., Justice of the Peace.

*Deed of a Corporation.*

KNOW ALL MEN BY THESE PRESENTS, That the .... Company, a Corporation established by law of the State of ...., in consideration of .... dollars paid to .... by C. D., the receipt whereof is hereby acknowledged, doth hereby give, grant, bargain, sell, and convey unto the said C. D., his heirs and assigns, all that parcel of land, situated in ...., bounded and described as follows, to wit: [*here describe the premises.*]

To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said C. D. and his heirs and assigns, to his and their use and behoof forever.

And the said .... company doth hereby covenant with the said C. D. and his heirs and assigns, that the said corporation is lawfully seized of the aforegranted premises; that they are free from all incumbrances; that the said corporation hath good right to sell and convey the same to the said C. D. in manner aforesaid; and that the said corporation will warrant and defend the same to the said C. D. and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, the said Corporation, hath caused its common seal to be hereunto affixed, and these presents to be signed by its President, [*treasurer or secretary*] hereto duly authorized, this .... day of ...., &c.

The B. S. Corporation, } L. S.  
by A. B., their President. } of Corporation.

Signed, sealed and delivered in presence of

*Deed of several Persons to a Corporation, with special Covenants.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., B. C., C. D., and D. E., all of ...., in the county of ...., and state of ...., in consideration of .... dollars, to us paid by the .... Company, a corporation established by authority of the State of ...., (the receipt whereof is hereby acknowledged,) do hereby give, grant, bargain, sell, and convey unto the said corporation, its successors and assigns, all that parcel of land and estate, situated in ...., commonly called ...., which is described and bounded as follows, to wit:— [*here describe the land.*]

To have and to hold the aforegranted premises, with the privileges and appurtenances thereof, to the said corporation, its successors and assigns, to its and their own use and behoof forever.

And we, the said A. B., B. C., C. D., and D. E., for ourselves respectively, and for our respective heirs, executors, and administrators, do covenant with the said corporation, its successors and assigns, that we are severally lawfully seized in fee, each of one undivided fourth part of the aforegranted premises; that they are free from all incumbrances; that we have severally good right to sell and convey the same to the said corporation, its successors and assigns in manner aforesaid; and that we will, severally and respectively, each for his said one fourth thereof, and our heirs, executors and administrators shall warrant and defend the same in the proportions aforesaid, to the said corporation, its successors and assigns, against the lawful claims and demands of all persons.

In witness whereof, the said A. B. and C. D., who are unmarried; and B. C. and D. E., together with O. C., wife of said B. C., and P. E., wife of said D. E., in token of their release of all right of dower\* in the granted premises, have hereunto set their hands and seals, this .... day of ...., in the year of our Lord one thousand eight hundred and fifty....

Signed, sealed and delivered in presence of

Signatures and Seals.

*Mortgage Note.*

\$....

B...., May ..., 185..

FOR VALUE RECEIVED, .... promise to pay to ...., or order, the sum of .... dollars, in .... from this date, with interest to be paid semi-annually, at the rate of .... per centum per annum.

In presence of

Secured by mortgage of real estate, in ...., recorded in .... Registry of Deeds.

\* In Massachusetts, the wife may release her right to the "homestead" in the same manner as she may now release her right of dower. M. L. 1857.

*Warranty Deed, where Grantors warrant separately, not jointly.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of . . . ., in the county of . . . ., and State of . . . ., and Mary, wife of said B., in her own right; and C. D. and Mary wife of said D., in her own right; and E. F. and Mary wife of said F., in her own right; and G. H. in his own right, all of . . . ., in the county of . . . ., and state aforesaid; in consideration of . . . . dollars, to us paid by J. W., of said . . . ., merchant, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said W., his heirs and assigns forever, a certain piece or parcel of land situate in the southerly part of said . . . ., bounded and measuring as follows, to wit: [*here state how bounded,*] all such measurements being more or less, or how-ever otherwise bounded; with all the privileges and appurtenances thereto belonging.

To have and to hold the aforesaid premises to the said J. W. and his heirs and assigns, to his and their use and behoof forever.

And we, the said grantors, for ourselves respectively, and for our respective heirs, executors and administrators, do covenant with the said grantee, his heirs and assigns, that the said M. B., M. D., M. F., and G. H., are severally lawfully seized in fee, each of one undivided fourth part of said granted premises, that they are free from all incumbrances; that we have good right to sell and convey the same in manner aforesaid, and that we will, and our heirs, executors and administrators shall warrant and defend the said granted premises in the proportions aforesaid, each grantor for his or their respective proportion, and not jointly, nor one for the other, to the said grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, we, the said A. B., M. B., C. D., M. D., E. F., M. F., G. H., and M. H., wife of said H., in token of her release of all right of dower in the granted premises, have hereunto set our hands and seals this . . . . day of . . . ., in the year of our Lord one thousand eight hundred and fifty . . . .

*Signed, sealed and delivered in presence of*

*Signatures and Seals.*

*Deed of Quitclaim by two Grantors.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of . . . ., in the county of . . . ., and State of . . . ., merchant, and B. B., also of said . . . ., single woman, in consideration of the sum of . . . . dollars to us paid by C. D. of . . . ., in the county of . . . ., and State of . . . ., farmer, (the receipt whereof is hereby acknowledged,) do hereby convey, remise, and forever quit claim unto the said C. D., his heirs and assigns, a certain tract of land situate in . . . . aforesaid, consisting of about . . . . acres, with all the buildings thereon standing, bounded and described as follows, viz: [*here insert description and boundaries:*] with all the privileges and appurtenances thereto belonging.

To have and to hold the above released premises, to the said C. D., his heirs and assigns, to his and their use and behoof forever.

And we, the said A. B. and B. B., for ourselves and our heirs, executors, and administrators, do covenant with the said C. D., his heirs and assigns, that the premises are free from all incumbrances made or suffered by us; and that we will, and our heirs, executors, and administrators shall warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under us, but against none other.

In witness whereof, we, the said A. B., and B. B., [who are unmarried], have hereunto set our hands and seals, this . . . . day of . . . ., in the year of our Lord eighteen hundred and fifty . . . .

A. B. [L. s.]  
B. B. [L. s.]

*Signed, sealed, and delivered in presence of*

NOTE. No conveyance by the owner of any property exempted as a *homestead*, the value whereof shall not exceed \$800, shall be valid in law, unless the wife shall join in the deed of conveyance. *Mass. Law*, 1857.

A wife is barred of dower by joining her husband in a deed conveying land, and therein releasing her right of dower. But it is not sufficient to bar her right, that she executes and acknowledges the deed, her name being introduced only at the conclusion, the purpose of her signing and sealing not being declared. 9 M. R. 220.

If the grantor is *unmarried*, instead of saying, "In witness whereof, I, the said A. B., and Mary, my wife, &c.," say: I, the said A. B., being unmarried, have hereunto set my hand and seal, &c.

*Deed of Trust. — Real Estate.*

KNOW ALL MEN BY THESE PRESENTS, That I, J. F., of . . . , in the county of . . . , in consideration of . . . dollars to me paid by A. K., of . . . , in the county of . . . , trader, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey to said A. K., his heirs and assigns, the following described parcel or tract of land, situated in . . . , and bounded and described as follows, to wit: northerly on land of A. B.; easterly on land of same B.; westerly on land of A. B.'s heirs; southerly on land of C. D. and others; westerly on land of E. F. and others, and northerly on W. street; said lot containing about thirteen acres and two rods, more or less; or however otherwise bounded and described.

To have and to hold the above described premises to the said A. K., his heirs and assigns forever.

IN TRUST for the uses and purposes following, to wit: —

1st. To receive and hold the same, and to receive and collect the profits and rents, income and emoluments from time to time arising therefrom.

2d. To pay over the net proceeds thereof as soon as received, to M. G., wife of A. G., of B., trader, for her sole and separate use, and her sole receipt shall be a sufficient acquittance and discharge for all moneys so paid. And at any time during the life of said Mary, to execute and deliver such deeds of the whole or any part or parts of the premises, and to such person or persons as she, the said Mary, may direct, she signifying her assent and direction by writing in said deed.

3d. At the decease of said Mary, then further in trust, to convey the same by deed of quitclaim, with warranty against incumbrances by or through himself to such person or persons as shall be designated by said M. G. in any writing left by her in the form of a Will.

And I, the said J. F., for myself and my heirs, executors and administrators, do covenant with the said A. K. and his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said A. K., and his heirs and assigns forever, to hold as aforesaid; and that I will and my heirs, executors, and administrators shall warrant and defend the same to the said A. K., and his heirs and assigns forever; against the lawful claims and demands of all persons claiming under me or my assigns.

In testimony whereof, I, the said J. F., and Mary F., my wife, in token of her relinquishment of dower, have hereunto set our hands and seals this . . . day of . . . , in the year eighteen hundred and fifty . . .

J. F. [L. s.]  
M. F. [L. s.]

*Signed, sealed, and delivered in presence of*

NOTE. The condition for which the trust is granted must depend on the nature of the property and intention of the grantor. A deed of trust may be made by a father to a son, or other person, of real or personal estate, conditioning that the father receive a stipulated sum yearly, during his life.

*Deed of Trust. — Personal Estate.*

THIS INDENTURE made the . . . day of . . . , A. D. 185 . . . , between A. B., of . . . , of the one part, and C. B., of . . . , of the other part, witnesseth: —

That the said A. B., in consideration of . . . dollars to him paid, and of the covenants and agreements hereinafter mentioned, by the said C. B. to be observed and performed, does hereby give, grant, bargain, sell, and convey to the said C. B., the following goods and chattels, to wit: [or if too numerous to be recited, say, all and singular the goods, chattels, tools, and machinery, mentioned and contained in the schedule hereto annexed.]

To have and to hold the property above granted, to the said C. B. his executors, administrators, and assigns forever.

And the said C. B., for himself, his heirs, executors, and administrators, doth covenant with the said A. B., that he will pay, or cause to be paid, to the said A. B. . . . dollars yearly, and every year, during the term of the natural life of the said A. B., by four equal payments, the first payment to be made on the . . . day of . . . next.

Provided always, and these presents are upon this condition, That if the said C. B., his heirs, executors, and administrators, shall neglect or refuse to



pay the said annual sum in manner aforesaid, it shall and may be lawful for the said A. B., all and singular, the premises hereby granted, to take, repossess, and enjoy as in his former estate.

In witness whereof the said parties have set their hands and seals to this and another instrument of like tenor and date.

A. B. [L. s.]  
C. B. [L. s.]

*Signed, sealed, and delivered in presence of*

### *Mortgage by Deed of Trust.—IOWA.*

FOR the purpose of securing to A. B., the sum of .... dollars, with interest from date, at the rate of .... per cent. per annum, I hereby convey to C. D. [here describe the property], and if the sum secured to A. B., is not paid to him by [stating the time of payment], I hereby authorize the said C. D. to sell the property herein conveyed [stating the manner, place of sale, notice to be given, &c.], to execute a deed to the purchaser, to pay off the amount herein secured, with interest, and costs, and to hold the remainder subject to my order.

P. J. [L. s.]

*Signed, sealed, and delivered in presence of*

### *Declaration of Trust.*

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, I, A. B., OF ...., MERCHANT, SEND GREETING: Having taken conveyances of certain real estate situate in .... street, in that part of .... called ...., from C. D. and E. F., as described in their deeds to me, bearing date the .... day of .... current, but this day delivered and recorded at the request and for the benefit of H. G. and Mary his wife, they having paid so much of the purchase money of said estates, as has been paid, and said H. having given his notes to said D. and F., for the balance due them respectively, to secure which notes, I have at the request of said H. and Mary, mortgaged back said real estates to said D. and F., as by mortgage deeds this day delivered and recorded, will appear.

Now I, the said A. B., hereby declare that I took and now hold the legal title of the said real estate in said deeds conveyed to me in Trust, and for the benefit of said H. G. and Mary his wife, that is, one undivided half for him, and the other undivided half for her; and I will convey the same, but without any warranty of title (except as against myself), to said H. and Mary, and their heirs respectively, in fee simple, upon request, and also being indemnified against and for any liabilities I may incur, or expenses I may have to pay by reason of said Trust.

In witness whereof, I have hereto set my hand and seal this .... day of ...., in the year of our Lord eighteen hundred and fifty ....

A. B. [L. s.]

*Signed, sealed, and delivered in presence of*

### *Sheriff's Deed.*

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of ...., in the county of ...., and Commonwealth of ————, or [State of] a Deputy Sheriff under C. D., Esq., Sheriff of said County, having, on the .... day of ...., in the year of our Lord one thousand eight hundred and fifty..., by virtue of a Writ of Execution, which was issued upon a Judgment, recovered at the Court of ...., holden at B, within and for the County of S, on the .... day of ...., in the year of our Lord eighteen hundred and fifty..., by E. F., Esq., in the County of ...., against G. H., of B, in the County of ...., for the sum of .... dollars and .... cents, damage and costs of suit taxed at .... dollars and .... cents, seized and taken all the right in equity which the said G. H. had on the .... day of ...., in the year of our Lord eighteen hundred and fifty..., being the time when the same was attached on mesne process of redeeming the following described mortgaged Real Estate, to wit: [here describe the estate,] and having on the .... day of .... last, being thirty days at least before the time of the sale hereinafter mentioned, given notice in writing, to the said G. H., of the time and place of sale, and having posted up notifications thereof in one public place in said town of B, and in one public place in each of the towns of C. and D. being two towns adjoining said town of B, and also hav-

ing caused an advertisement of the time and place of sale, to be published three weeks successively, before the day of sale in the public newspaper called the N. S. printed at B. in said County of S. on the .... day of ...., in the year of our Lord eighteen hundred and fifty..., made sale of said right in equity of redemption at Public Auction, to K. L., of ...., in ....; he being the highest bidder for the same, for the sum of ... dollars; Now, therefore, in consideration of said sum of ...., dollars to me paid by the said K. L., the receipt whereof I do hereby acknowledge, I have given, granted, bargained and sold; and do, by these presents, give, grant, bargain, sell and convey to the said K. L., his heirs and assigns forever, all the right in equity which the said G. H., had of redeeming the aforesaid mortgaged real estate, at the time aforesaid. To have and to hold the same to the said K. L., his heirs and assigns, to his and their use forever; subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said A. B., in my said capacity of Deputy Sheriff, do covenant with the said K. L., as aforesaid, that, in making said sale, and in everything concerning the same, I have complied with, and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said K. L., that the said G. H. had any right, title or interest in said estate at the time aforesaid.

In witness whereof, I, the said A. B., in my said capacity of Deputy Sheriff, have hereunto set my hand and seal this .... day of ...., in the year of our Lord one thousand eight hundred and fifty...

A. B. (L. s.)

*Signed, sealed and delivered in presence of*

#### *Executor's Deed.*

KNOW ALL MEN BY THESE PRESENTS, That whereas I, A. B., of ...., in the county of ...., and commonwealth of [or state of] ...., executor, [or executrix] of the will of C. D., late of said ...., deceased, by an order of the court of probate begun and held at .... within and for the county of ...., on the .... day of ...., in the year 185..., was licensed and empowered to sell and pass deeds to convey certain real estate of the said deceased; and whereas I, the said executor, having giving public notice of the intended sale, by causing notifications thereof to be published once a week for three successive weeks, prior to the time of sale, in the newspaper called the ...., printed in ...., and having first taken the oath ... by law in such cases required, did on the .... day of ...., in the year 185..., pursuant to the order and notice aforesaid, sell by public auction the real estate of the said deceased, hereinafter described, to E. F., of ...., in the county of ...., for the sum of .... dollars, he being the highest bidder therefor.

Now, therefore, know ye, that I, the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of ... dollars, to me paid by the said E. F., the receipt whereof is hereby acknowledged, do, by these presents, give, grant, sell, and convey unto the said E. F., his heirs and assigns, the following lot of land, viz: [*here describe it and how bounded.*]

To have and to hold the aforegranted premises, with all the privileges and appurtenances to the same belonging, to him the said E. F., his heirs and assigns, forever. And I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant with the said E. F., his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath .... by law required, previous to fixing on the time and place of sale.

In witness whereof, I, the said A. B., executor as aforesaid, have hereunto set my hand and seal this .... day of ...., in the year of our Lord eighteen hundred and fifty ....

A. B. [L. s.]

*Signed, sealed, and delivered in presence of*

#### *Administrator's Deed.*

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, I, A. B. of ...., in the county of ...., and state of ...., administrator of the estate of C. D., late of said ...., deceased, intestate, SEND GREETING: Whereas, by an order of the .... court begun and held at ...., within the county of ...., on the .... day of .... last past, I, the said A. B., was licensed and empow-

ered to sell and pass deeds to convey the real estate of the said C. D., herein- after described. And whereas I, the said A. B. having given public notice of the intended sale, by publishing a notification thereof, three weeks successively, in the newspaper called the . . . , printed in . . . , agreeably to the order and direction of said court, and having given the bond and taken the oath by law in such cases required, previous to fixing upon the time and place of said sale, did, on the . . . day of . . . , in the year 185. . , pursuant to the license and notice aforesaid, sell by public auction the real estate of the said C. D. hereinafter described, to E. F., of . . . , in the county of . . . , for the sum of . . . dollars, he being the highest bidder therefor.

Now, therefore, know ye, that I the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of . . . dollars, to me paid by the said E. F., the receipt whereof is hereby acknowledged, do hereby, grant, bargain, sell and convey unto the said E. F., his heirs and assigns, the following described parcel of real estate, with all the privileges and appurtenances thereto belonging, viz : *[insert description, &c.]*

To have and to hold the aforegranted premises to the said E. F. his heirs and assigns to his and their use and behoof forever. And I, the said A. B., for myself, my heirs, executors and administrators, do hereby covenant with the said E. F., his heirs and assigns, that in pursuance of the license aforesaid, I took the oath and gave the bond by law required, and gave public notice of said sale as above set forth.

In witness whereof, I, the said A. B., have hereunto set my hand and seal, this . . . day of . . . , in the year of our Lord one thousand eight hundred and fifty. . . .

*Signed, sealed and delivered in presence of*

A. B. [L. s.]

*Deed by an Administrator of an Estate, which an Intestate had by Deed bound himself to convey.*

TO ALL PEOPLE TO WHOM THESE PRESENTS MAY COME, A. B., of . . . , in the county of . . . , administrator of the goods and estate which were of E. F., late of . . . , in the county of . . . , deceased, intestate, — sends greeting.

Whereas, heretofore, on the . . . day of . . . , an agreement was made between the said intestate and C. D., of . . . , whereby the said E. F., on certain conditions in said agreement stated, engaged and bound himself by deed to convey the estate in said agreement described to the said C. D., which said agreement was as follows, to wit, *[here recite the agreement]* ; and whereas the said C. D. has fully complied with and performed all the conditions on his part in said agreement contained, and on representation thereof to the Court of . . . , holden at . . . , on . . . , the said Court, by their decree, did authorize and empower me the said administrator, by deed, to grant and convey the estate in said agreement described, to the said C. D., upon the terms and conditions in said agreement contained.

Now, therefore, know ye, that by virtue of the authority and decree by said court, given as aforesaid, and in order to carry into full effect, the said agreement of the said E. F. on his part,—that I, the said A. B., administrator as aforesaid, in consideration of . . . , to me in that capacity paid by the said C. D., the receipt whereof I do hereby acknowledge ; and in consideration that the said C. D. has in all things fulfilled and performed the conditions on his part in said agreement contained, do hereby give, grant, sell, and assign, to him the said C. D., his heirs and assigns, all the said E. F.'s right, title, and interest, which he had at the time of his decease, in and to the estate in said agreement described. To have and to hold the same to him, the said C. D., his heirs and assigns, to his and their use and behoof forever, in as full and ample a manner as I, the said A. B., in my capacity of administrator of said E. F. as aforesaid, and by force of said decree and authority or license of said court, am empowered to convey the same.

In witness whereof, &c.

*Signed, sealed and delivered in presence of*

A. B. [L. s.]

NOTE — If in this deed the widow releases her dower, she, as well as the administrator, must acknowledge the deed.

*Deed by an Executor under an authority in a Will.*

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, I, A. B., of ... in the county of ..., executor of the last will and testament of C. D., late of said ..., deceased, testate — send greeting.

Whereas, the said C. D., in order to enable his said executor fully to carry into effect his intentions, did in and by his last will and testament, authorize and empower his said executor, in any manner which he should deem proper, to make sale of, and execute and deliver deeds to convey all his, the said testator's real estate.

Now, therefore, know ye, that, by virtue and authority to me given by said C. D., in his last will and testament, I, the said A. B., executor as aforesaid, in consideration of the sum of ... dollars, to me paid by E. F., of ..., the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey, unto the said E. F., his heirs and assigns, the following described parcel of real estate, which was the property of the said C. D., situated in ..., and bounded and described as follows, to wit, [*here describe the premises.*]

To have and to hold the aforegranted premises, to him the said E. F., his heirs and assigns, to his and their use and behoof forever.

In witness whereof, I, the said A. B., executor as aforesaid, have hereunto set my hand and seal the ... day of ..., A. D. 185..

*Signed, sealed and delivered in presence of*

A B [L. s.]

NOTE. A will sometimes authorizes an Executor to sell real and personal estates. In such cases the Executor may sell without any other authority.

*Guardian's Deed.*

KNOW ALL MEN BY THESE PRESENTS, That whereas I, A. B., of ..., in the county of ..., and commonwealth of [or state of] ..., guardian of C. D., minor child of E. D., by an order of the court of probate, held at ..., within and for the county of ..., on the ... day of ..., in the year 185.., was licensed and empowered to sell and pass deeds to convey certain real estate of the said minor; and whereas I, the said guardian, having given public notice of the intended sale, by causing notifications thereof to be published once a week, for three successive weeks, prior to the time of sale, in the newspaper called the ..., printed at ..., and having first taken the oath and given the bond, by law in such cases required, did on the ... day of ..., in the year 185.., pursuant to the order and notice aforesaid, sell by public auction the real estate of the said minor, hereinafter described, to G. H., of ..., in the county of ..., for the sum of ... dollars, he being the highest bidder therefor.

Now therefore, know ye, That I, the said A. B., by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of ... dollars, to me paid by the said G. H., the receipt whereof is hereby acknowledged, do, by these presents, give, grant, sell, and convey unto the said G. H., his heirs and assigns, the following described estate, viz.: [*here give description and boundaries.*]

To have and to hold the aforegranted premises, with all the privileges and appurtenances to the same belonging, to him the said G. H., his heirs and assigns, to his and their use and behoof forever. And I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant with the said G. H., his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath by law required, previous to fixing on the time and place of sale, and gave the bond previous to said sale.

In witness whereof, I, the said A. B., guardian as aforesaid, have hereunto set my hand and seal this ... day of ..., in the year A. D. 185..

A. B. [L. s.]

*Signed, sealed, and delivered in presence of*

DUTIES AND LIABILITIES  
OF  
EXECUTORS & ADMINISTRATORS.



## DUTIES AND LIABILITIES

OF

## EXECUTORS AND ADMINISTRATORS.

*Appointment of Administrator.*

An Executor is he to whom another man commits the execution of his last will and testament. If the testator make an incomplete will, without naming executors, or if he name incapable persons, or if the executors named refuse to act; in any of these cases the *probate court*, the *surrogate*, or other *similar tribunal*, must grant letters of administration to some person, who is called an administrator with the will annexed; and the duties of the *administrator* so appointed, nearly coincide with those of an executor.

The principal points of the office and duty of executors and administrators are generally very much the same; excepting that the executor is bound to perform a will, which an administrator is not, unless where a testament is annexed to his administration, and then he differs still less from an executor; and also, that an executor may do many acts before he proves the will, but an administrator may do nothing till letters of administration are issued; for the executor derives his power from the will

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NOTE. An executor derives his power over the real estate of the testator from the will, and acts as the trustee of the testator to fulfil a personal trust. The authority of an administrator with the will annexed, emanates from, and depends upon legislative enactments. A power to executors to sell lands situate in Ohio, given by a will made in Virginia, could not be executed by an administrator with the will annexed, appointed in Virginia under their laws, in the absence of any statute of the State of Ohio authorizing the execution of such power by such an administrator. 2 Ohio Rep. 124; s. c. 3 O. R. 488; 9 O. R. 49. See also 2 Blackf. Ind. R. 247.

The final settlement of the accounts of executors and administrators in the probate court, is considered *prima facie* correct; and the settlement can only be interfered with in very clear cases of fraud or mistake. 4 Blackf. R. 115.

An administrator is liable for any interest he may have collected on the debts to the estate, *ib.*

and not from the probate, but the administrator owes his entirely to his appointment by the judge of probate. 2 Bl. Com. 506-7.

As a consequence of the principle that an executor derives all his title from the will, his interest is completely vested at the instant of the testator's death; and therefore before probate, he may lawfully perform most acts that are incident to the office. He may make an inventory, and possess himself of the testator's effects; he may enter peaceably into the house of the heir and take the books of accounts and all other securities for the debts due to the deceased, or remove his goods; he may pay or take releases of debts owing from the estate; he may receive or release debts which are owing to it; he may sell, give away, or otherwise dispose, at his discretion, of the goods of the testator. 1 Salk. 299, and Com. Dig.; Admin. B. 9.

An administrator appointed to administer the estate of a person who has left no will, may be the *widow* or next of *kin*; in default of these a *creditor* has the right of administering for the purpose of obtaining payment of his debt, and if there be none such, the judge will appoint whom he thinks fit. Provided, that if the deceased were a married woman, administration will be granted to her husband, unless she has made some testamentary disposition of her separate estate, which makes it proper to appoint some other person.

A petition to the Judge of Probate praying for administration, is the first paper to be prepared by a person applying for the administration. It describes the name, residence, and profession of the petitioner, and that he or she is husband, wife, child, father, mother, uncle or aunt of the deceased, (as the case may be) and if the next of kin decline and signify their desire or consent to have the petitioner appointed, it states these facts; and when the next of kin neglect or refuse to administer,\* and one of the principal creditors should apply for administration, he should state these facts in his petition. The petition should also state the name, profession of the deceased, and the place where he last dwelt, the time or near the time of his decease, his dying intestate, and leaving goods and estate of which administration is necessary.

When it appears that the widow or next of kin, or whoever they may be, to whom the right to administer appertains, applies for administration, unless incapable or evidently unsuitable, their appointment is made as a matter of course. But if there are equal or prior claims, those who have such claims should express their consent in writing to the judge to have the petitioner appointed, otherwise the judge will order a citation for them to appear, if they see fit, and show cause why the prayer of the petitioner should not be granted. When there-

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\* In Massachusetts for more than thirty days.



fore this is the case, the petitioner should, to save time and expense, always procure the consent of those who have the right to administer, in writing, to his appointment.

No administration can be originally granted, after the intestate has been dead twenty years.

Public administrators are appointed by the governor, for each county, to administer upon the estate of any person who shall die intestate, leaving no heir or kindred in the state, who by law can inherit his estate. *M. L.* 1839. But a lawful heir may claim the right, or request that some other suitable person be appointed, and the requisite bond be given. *ib.* 1853.

Judges of probate may allow executors or administrators to resign, and upon such resignation may grant new letters of administration. *M. L.* 1843.

Generally, whatever is done in Probate Court, should be done on memorial or petition. It will generally be sufficient, if the thing petitioned for be sensibly and plainly stated in the petition.

It is commonly provided that recording notices, the returning of inventories, notices and affidavits of sale, &c., shall forever after be conclusive evidence of the facts thus recorded. Executors and administrators should be very careful seasonably to return to the Probate office all such affidavits and notices with the evidence of their service, and have them recorded there; otherwise, at some distant day, although they had faithfully obeyed the requisitions of law, the evidence of it might be lost, and they would be in danger of incurring penalties on the bond.

Every executor, administrator, guardian, or other person, authorized to make sale of lands, shall be required upon application to the judge of probate, of any heir, creditor, or other person interested in the estate, to make answer upon oath respecting his exercise and fulfilment of the license including all proceedings under it, as fully as he is now liable to account and to be examined in reference to personal estate; and if in relation to any sale, any person interested in the estate shall suffer damage from his misconduct or neglect, he may recover compensation therefor, on the probate bond or otherwise. *M. L.* 1857.

Upon complaint made to the judge of probate by any executor, administrator, heir, legatee, creditor, or other person interested in the estate, against any one suspected of having fraudulently received, concealed, or conveyed away money, goods, or effects of the deceased, such suspected person shall be cited to appear before the judge for examination, and if he refuse, he shall be committed to jail. *M. L.* 1857.

So, upon complaint made, against any one suspected of retaining, or concealing, or conspiring with others to retain or conceal, any will or testamentary instrument of the deceased, the judge may cite such suspected person to appear before him for examination. *M. L.* 1849.

*Bond of Executor or Administrator.*

Every person appointed executor or administrator must execute a bond with sureties for the due performance of his trust.\*

Whenever the penal sum in any bond shall appear to be insufficient, the judge, on the petition of any person interested, may require a new bond. *M. L.*, 1851, c. 31.

Sureties may, at any time, be discharged prospectively, by supreme or probate court, and new bond, with sureties thereupon given. *M. L.* 1843.

An executor shall be exempt from giving sureties on his bond when the testator has ordered or requested such exemption, or that no bond should be taken, or when all persons, of age, interested in the estate consent thereto; provided creditors and guardians have been notified. *M. L.*, 1858.

The petition and bond may be prepared at home, taking care that the bond is unexceptionable, as to the penal sum, sureties and witnesses. The penal sum of the bond should be double the amount of the estate; and as the judge in most instances can have no personal knowledge of this, nor of the sufficiency of the sureties offered, nor of the persons to be appointed appraisers, it is important to have the opinion in writing of those interested in the estate.

*\* Form of Administrator's Bond.*

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., of —, in the county of —, widow of the late C. B., as principal, and C. D., of said —, farmer, and E. F., of said —, merchant, as sureties, in the Commonwealth of Massachusetts, are holden and stand firmly bound and obliged unto E. G., Esq., Judge of Probate of Wills, and for granting administration, within the County of —, in the sum of — Dollars, to be paid unto the said Judge and his successors in the said office, to the true payment whereof, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, by these presents sealed with our seals. Dated — day of —, in the year one thousand eight hundred and fifty-six.

The condition of this obligation is such, that if the above bounden A. B., who has this day been appointed *Administratrix* of the estate of L. B. deceased, intestate,

FIRST—shall make and return into the Probate Court, for the County of —, aforesaid, within three months, a true Inventory of all the real estate, and all the goods, chattels, rights and credits of the said deceased, which have or shall come to her possession or knowledge;

SECONDLY—shall administer according to law all the goods, chattels, rights and credits of the said deceased, and the proceeds of all his real estate, that may be sold for the payment of his debts, which shall at any time come to the possession of the said *administratrix*, or to the possession of any other person for her;

THIRDLY—shall render upon oath a true account of her administration within one year, and at any other times when required by the said Judge of Probate;

FOURTHLY—shall pay any balance remaining in her hands upon the settlement of her accounts, to such persons as the said Judge of Probate shall direct: and

FIFTHLY—shall deliver the letters of administration into the said Probate Court, in case any will of the said deceased shall be hereafter duly proved and allowed:—Then the above written obligation shall be void, otherwise shall remain in full force.

|       |         |
|-------|---------|
| A. B. | [L. s.] |
| C. D. | [L. s.] |
| E. F. | [L. s.] |

*Signed, sealed and delivered in presence of*

The petition, bond and evidence, being thus prepared, may be presented to the court by an agent, or attorney, when it is inconvenient for the petitioners to attend personally.

### *Inventory, Appraisers, and Notice of Appointment.*

After the bond is approved, and a decree of the appointment made, the judge grants to the applicant his letter of administration, and at the same time a warrant of appraisal. Being thus furnished with credentials, the administrator may enter upon his trust, by giving notice\* of his appointment; and collecting into his care and custody all the personal estate, and papers of the deceased, and forthwith proceed to prepare an inventory of the same.

If appraisers are appointed, the executor or administrator should deliver them the warrant of appraisement, have them duly sworn before a register of Probate, or justice of the peace, and proceed to exhibit to them all the property of the deceased, his real estate, goods and chattels, rights and credits, and their duty shall be to make out a true and proper inventory of the same, [see Inventory at p. 72,] and a return of their doings thereon, and deliver it sealed up, to the administrator.

When the executor or administrator has completed the inventory, he will take the earliest opportunity of attending the Probate Court, and returning it.† Generally the executor or

### NOTE. *Bond of Indemnity.*

Should an Executor or Administrator meet with any difficulty in obtaining sureties, the heirs who are of age, or any other persons, may execute the following Bond:—

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., C. D., E. F., G. H., and I. K., all of B., in the County of —, are held and firmly bound to R. S., of B. aforesaid, in the sum of — dollars, to be paid to the said R. S., to the payment whereof we jointly and severally bind ourselves and our respective heirs firmly by these presents, sealed with our seals. Dated the — day of —, eighteen hundred and fifty-six.

The condition of this obligation is, That if the said A. B., C. D., E. F., G. H., and I. K., shall indemnify R. S., against all loss, cost, damage and expense to which he may be subjected by reason of his signing, at the request and as surety for said A. B., a bond to the Judge of Probate of the county of —, in the penalty of — dollars, conditioned for the faithful discharge by said A. B. of his duties as administrator on the estate of L. M. deceased, then this obligation shall be void.

A. B. [L. s.] and others.

*Signed, sealed and delivered in presence of*

\* Within three months after giving bond, every executor or administrator shall cause notice of his appointment to be posted up in two or more public places, in the town in which the deceased last dwelt, or instead of such posting up by publishing the same in some newspaper, or in such other manner as the Judge of Probate may direct. An affidavit of the executor or administrator, or of the person employed by him, with a copy of the notice, must be recorded in the Probate court within one year after giving bond. *Mass. R. S. 66.*

† In *Massachusetts* every executor or administrator shall return to the probate court an inventory of all the property of the deceased within three months.

The inventory may be sworn to before the register of probate at all times, either in or out of court. *Law of 1852.*

administrator, can be prepared to decide, at the time of returning the inventory, whether it will be expedient to apply for an order for the sale of the personal estate or any part of it, and may at the same time make the application and obtain the order.

An application for the sale of personal property should be in writing, and briefly state the reasons which render it necessary or expedient; and, if a private sale is requested, the circumstances which render this proper.

The judge of probate may permit any executor who is also residuary legatee, to give bond with condition to pay all debts and legacies of the testator, and allowance to widow and children. And when such bond shall be given, the executor shall not be required to return an inventory. *M. L.* 1857.

### *Powers of Administrator for the Collection and Payment of Debts and disposal of Personal Property.*

An executor or administrator has large powers and interests conferred on him by law; being the representative of the deceased, and having the same property in his goods as the principal had when living, and the same remedies to recover them. Whatever is so recovered, that is of a saleable nature and may be converted into ready money, is called *assets* in the hands of the executor or administrator; that is, sufficient or enough to make him chargeable to a creditor or legatee, so far as such goods and chattels extend. Whatever assets so come to his hands he may convert into ready money, to answer the demands that may be made upon him.

The executor or administrator must *pay* the *debts* of the deceased if there are sufficient assets. In payment of debts he must observe the rules of priority; otherwise, on deficiency of assets, if he pays those of a lower degree first, he must answer those of a higher out of his own estate.

In Massachusetts, and most of the States where the *assets* are sufficient they are appropriated: *First*, to the payment of the expenses of the last sickness, and funeral and probate charges; *Second*, debts due the United States; *Third*, rates and taxes and sums due the State; and then all other debts in equal proportion.\*

For the purpose of closing the settlement of an estate the Probate Court may, on petition of executor or administrator, grant a license for the sale or assignment of all outstanding debts, claims or assets due or belonging to such estate. *M. L.*, 1851.

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\* In New York debts of the deceased are paid in the following order:

1. Debts entitled to a preference under the laws of the U. S. 2. Taxes on the estate of the deceased before his death. 3. Judgments docketed and decrees enrolled according to their respective priorities. 4. All other debts are put on an equal footing with each other. (2 R. S. N. Y.)

But nothing in the foregoing act shall deprive executors or administrators of the right to transfer at pleasure, deeds of mortgage, and the real estate thereby conveyed, and the debts thereby secured, either before or after the foreclosure of the same. *M. L.* 1852, c. 41.

No legacy can be required until all the debts (presented in time) are paid, unless the executor be indemnified.

On petition to the Judge of Probate, made within six months after the return of the inventory, by the executor, administrator, creditor, legatee, or any person interested in the estate, he may order the whole or part of the personal estate to be sold at private sale or public auction for the benefit of all concerned in the estate. *M. R. S.* 67.

If a part or the whole of the personal estate should be sold, either at public or private sale, the administrator must account for the same to the Judge of Probate; and the account of sales should state the price for which it sold. *Ibid.*

#### *Account of Sales of Personal Estate.*

Account of the sales of the personal estate of A. B., farmer, late of B., in the county of C., deceased, intestate, pursuant to the order of the Hon. Judge of Probate for the County of C., dated the — day of —, 185—, the sales being made on the — day of —, at C., aforesaid, the — 185—.

| Articles sold.       | Appraised Value. | Sold for. | Purchasers' names. |
|----------------------|------------------|-----------|--------------------|
| 1 Horse .....        | \$ 75 00         | \$ 80 00  | C. D.              |
| 1 yoke of Oxen ..... | 75 00            | 70 00     | E. F.              |
| 1 Cow .....          | 20 00            | 18 00     | G. H.              |
| 1 do. ....           | 18 00            | 21 00     | L. M.              |
|                      | 188 00           | 189 00    |                    |
|                      |                  | 188 00    |                    |
| Net gain             |                  | \$ 1 00   |                    |

If there is money enough arising from the sales of the personal estate to pay the debts, funeral and administration charges, and widow's allowance, the administrator will proceed to pay those claims, and render his account of administration as soon as the year closes. [See Form of Administrator's Account at p. 72.]

#### *What is considered Personal Estate.*

Leases for years are considered as personal estate, and may be sold by the executor or administrator as other personal estate.

So are stocks in the public funds, and shares in banks or any incorporated company, or copy-rights and patent rights.

Mortgages and assignments of mortgages, and the debt secured thereby are considered as personal assets in the hands of the executor and administrator.

If a tenant for his own life sows or plants the land and dies before harvest, his executors or administrators shall have the profits of the crop. 2 *Blac. Com.* 122.

Trees not severed and their fruit, as apples, pears, &c., go to the heir and are not assets. So grass growing, though fit to be mowed. But corn, though growing, and all things of the kind produced annually by labor and cultivation, go to the executor or administrator, and this includes roots in the ground which are produced by labor and art, by annual cultivation.

The executor or administrator is also chargeable with, as assets, all chattels, real and personal, he receives from the deceased; as terms for years in lands, houses, mortgages, and debts thereby secured, until the equity of redemption is foreclosed or released, and the mortgagee is in possession. And if not mentioned to whom payable, is payable to the executor or administrator, and not to the heir, because originally derived out of the personal estate. *Dane's Ab.*

Emblements go to the executor or administrator as assets, and all property a lessee for years has in trees, but his fruit, &c., goes to his executor or administrator as assets, but these must be severed during the term. *Ibid.*

Vegetables, animals *feræ naturæ*, are assets in the hands of the executor, and the minutest property of the deceased in his animals in point of value goes to the executor, as house-dogs, &c., or left only for pleasure or whim, as parrots, &c., vegetables, as fruit, plants or trees when severed, are assets, as grass mown, and apples gathered. 11 *Vin. Ab.* 175.

### *Disposal of Real Estate.*

If there should appear a deficiency of personal estate, the executor or administrator shall present to the court a petition for license to sell so much of the real estate, if any, or enough there be, as is necessary to pay the debts, administration charges, &c.

The testator not unfrequently gives an authority in the will to the executor to occupy and improve the real estate or a part of it for specific purposes, or to make sale of the whole or a part of it for the payment of debts, legacies, &c. In such cases he must pursue the course pointed out by the will.

If the testator, by his will, gives the executor no special authority relating to the real estate; then the authority he has, is similar to that of an administrator.

At common law the lands descend to the heir, on the death of the owner, subject to the payment of debts, if there be a deficiency of personal assets. The administrator frequently enters on the lands, and accounts for the rents and profits in the probate court; and this practice may not be inconvenient to the heirs. But in law the administrator has no right to enter into

the lands, or take the profits. He has no interest in them, but a naked authority to enter for the purpose of inventorying them, and to sell them, on license, to pay debts, when the personal estate is insufficient. 4 *M. R.* 356.

Executors and administrators, or other persons, giving bonds to judge of probate, may be exempted, at the discretion of the judge from giving bonds for the proceeds of the sales of real estate, except when authorized to sell the same. *M. L.* 1850.

Any real estate held by an executor or administrator, in mortgage, or taken in execution by him, may be sold at any time, before the right of redemption is foreclosed, in the same manner as the personal estate of a deceased person may be sold by an executor or administrator. *M. L.* 1849.

The notice which the statutes require to be given, by an administrator who obtains license to sell the real estate of his intestate, of the time and place of sale, is essential to the validity of the sale; and in the absence of all evidence that such notice was given, no presumption will be made, within thirty years, that it was given. 8 *Met.* 355.

### *Liabilities of Executors and Administrators.*

Executors and administrators are held to be liable to the value of assets in their hands, on all such contracts of the deceased as are broken in his life time; and (with the exception of contracts in which *personal* skill and taste is required,) on all contracts broken after his death.

No verbal promise by an executor or administrator to pay a debt of his testator or intestate, makes him liable out of his own estate; for *first*, it is enacted by the *Statute of Frauds* that no action shall be brought whereby to charge an executor or administrator upon any special promise to answer damages out of his own estate, unless the agreement upon which such action shall be brought or some memorandum, or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him lawfully authorized; and *secondly*, because in order to render an executor or administrator personally responsible for such a demand, it is essential not only that his promise should be in writing and signed, but that there should exist some *new* and sufficient consideration for such promise, such as forbearance, or the like. But it would seem that forbearance to sue even for a legacy, is a sufficient consideration for the promise of the executor. So, an agreement by the creditor to wait for payment until a future day, is a sufficient consideration. And it seems that, if an executor promise to pay a debt of his testator, merely in consideration of his having assets, that will be sufficient to charge the executor *personally* on such promise. *Chitty on Contracts*, 243.

If an executor give orders for the funeral of the deceased, or ratify orders given for it by another, he will be personally liable for the reasonable expenses thereof; and so, if he neglects to give orders for the funeral of his testator, and has sufficient assets, he is personally liable on an implied promise for the expenses of a funeral, suitable to the testator's degree and circumstances, unless such expenses were incurred on the credit of some other person. *Ibid.*

If an executor or administrator indorse a bill or note, he is personally responsible, although the instrument was vested in, and transferred by him, in his representative character. So, if he make a promissory note whereby he promises, "as executor" to pay a sum of money, "with interest on demand," he is personally liable thereon, without reference to assets. *Ib.* 246.

So, also it is settled law, that, if a note be assigned to an executor or administrator, as such he may maintain an action on it in that capacity; but if it be indorsed by an executor or administrator, the indorsee may maintain an action against him in his private capacity; and it has been said, that in this instance, the contracting as executor or administrator, will not screen a person from being responsible in his private capacity. *Ibid.* 190.

If an administrator execute a contract in writing, as administrator, it will nevertheless bind him in his private capacity. 6 *M. R.* 53.

Every executor in his own wrong, is liable for the full value of the goods or effects of the deceased taken by him, and for all damages caused by his acts, to the estate of the deceased; and he shall not be allowed to retain or deduct any part of the goods or effects, excepting for such funeral expenses or debts of the deceased, or other charges actually paid by him, as the rightful executor or administrator might have been compelled to pay.

An executor or administrator in his own wrong is one who undertakes to act as such without a legal appointment.

If an executor or administrator commence a suit, and fail to support it, judgment will be rendered against his own goods and estate for costs; but he may, after payment of such costs, charge it in his account of administration, to be allowed or not, as may appear to the Judge of Probate that the suit was discreet or otherwise; and thus justice may be done to all persons interested, and the discretion of the administrator be subject to wholesome restraint. 15 *Mass.* 530.

The charging of himself with the personal estate in the account as executor or administrator, is *prima facie* evidence only of assets, to the amount of the inventory; for if, by inevitable accident, a part of the articles inventoried should be lost, without the fault or neglect of the executor or administrator; or if, in a sale, fairly conducted, the real value or proceeds should be found less than the appraisement, the loss or difference



will be allowed, in the adjustment of the account, or these circumstances may be given in evidence to repel a charge of waste.

If the effects of the deceased are sold or embezzled by any person who has not taken out letters testamentary or of administration thereon, and given bond as executor or administrator, he shall be liable to the actions of the creditors, as an executor in his own wrong. *M. R. S.* 64.

An executor or administrator should object to all claims not recoverable by law.

Judges of Probate may authorize executors and administrators, to adjust by arbitration or compromise any claims and demands in favor or against the estates by them represented. *M. L.*, p. 80, 1855.

When any debtor shall not have assets sufficient to pay all his debts, the executor, or administrator, with the approbation of the Judge of Probate, may compound with such debtor and give him a discharge, upon receiving a fair dividend of his estate and effects.

Lands descended in another state are not assets in Massachusetts.

The receipt of a collector of taxes is necessary to be produced in order to have the charges for the payment of taxes by the executor or administrator allowed in his account of administration; and also satisfactory proof of other payments.

An administrator is under no obligation to advance his own money for the benefit of the estate of his intestate, and if he does no interest will be allowed him by the probate court in his settlement of his administration accounts. As it is no part of his duty to advance his own funds, but always in his power to raise money from the estate.

If the administrator receive the rents and profits of lands of the deceased, he must account for them as for personal estate, and may apply them, if wanted, to the payment of debts, and if not wanted, they will be distributed as personal estate.

But the rents and profits of the land received by the heirs are not assets.

If an executor or administrator release a debt or any contract, by which his testator or intestate was entitled to a sum of money or any other advantage, the release is in his own wrong, and he will be chargeable for the amount or value.

So if he compound debts or mortgages, and buy them in, even with his own money, for less than is due upon them, the executor or administrator is not to have the advantage to himself; but it belongs to the creditors and legatees or party entitled to the surplus.

So if an executor redeem a pledge with his own money, it shall be assets in his hands to pay debts and legacies.

And when the assignee of a bankrupt, after his decease, as-

signed his chose in action and other personal estate to his administrator, with the will annexed for his own use and benefit, although he had paid a consideration therefor out of his own money, yet he was still held accountable for the same to the creditors and legatees.

The executor or administrator has no control over lands, unless they are required for payment of debts.

Although an executor or administrator has no right to enter and occupy the real estate of the deceased, against the will of the heirs, yet he may do so with their implied consent, accounting for the rent and profits, as may be agreed on by the parties, and the rents and profits, when ascertained, will become a part of the fund if wanted, for the payment of debts; and if not wanted, they will form a part of the distributive shares of the personal estate. 16 M. R. 280; 1 Pick. 157.

If a man erect buildings on land belonging to his wife, his executor or administrator will have no right to take them to administer upon; but they belong to the wife.

Where the administrator of an insolvent estate, under a license of court to sell the real estate of the intestate, for the payment of his debts, in his deed, *covenanted* in his said capacity of *administrator*, that he, as *administrator*, was lawfully seized, and in his said capacity had good right to sell, and that as *administrator*, he would warrant and defend the same, and he signed and sealed the deed as administrator; it was held that he was *personally* liable on his covenants. 8 M. R. 162.

It therefore behooves *executors* and *administrators*, who sell real estate, to be cautious what covenants are contained in their deeds and never to guarantee the title of property sold by a license from court any farther than as it respects the legality of their own proceeding.

The general rule has been, not to charge executors with interest, when their accounts are settled in the ordinary course, and the reason is, that they are not at liberty to risk the money belonging to the estate which they represent, and they are to be always ready to pay it over according to the directions in the will, or the decree of the probate court.

But this rule admits of an exception, where it shall appear, that the executor has actually made use of the money, and this fact may be proved by direct testimony, or may be inferred from long delay in settling his accounts, or in paying over the balance in his hands after it has been demanded, or perhaps from other circumstances.

Where the executors credited themselves in an administration account with a gross sum of interest, received by them of the debtors to the estate, without showing at what times it had been received, or the amount received of each debtor; it was

held on an appeal to the supreme court, that the appellant had a right to exact a specification of the times when the several sums were received, and that the executors could not protect themselves by such general credit.

Every executor or administrator is required within a certain time\* to render his first account of his administration upon oath; and also, in like manner such further accounts of his administration, from time to time, as may be necessary or convenient, or when required by the Judge of Probate. [See Executor's and Administrator's Account at p. 72.]

If the executor or administrator refuse or neglect to settle his account of administration, the heir at law, or legatee, may petition the Judge of Probate that said executor or administrator be cited to render his account of administration agreeably to law.

*When suit can be commenced against Administrator.*

The administration bond may be put in suit by any creditor, for his own benefit, whenever he has recovered judgment against the executors or administrators, and they having assets, have neglected to pay his debt on demand, or show property to be taken in execution for that purpose; or when the amount due him has been ascertained by the decree of distribution, and the executors or administrators neglect to pay on demand. *M R.S.70.*

Such suit may be brought by the next of kin to recover his share of the personal estate, after a decree of the court ascertaining the amount due him, if the administrator or executor neglect to pay on demand, and generally it may be brought by any person interested in the estate who may be authorized by the judge. *Ibid. 70.*

Suits on administration bonds must be brought in the Supreme Judicial Court for the county in which the administration bond is taken. *Ibid. 70.*

If, in consequence of unreasonable delay on the part of any executor or administrator to convert the estate of the deceased into money, said estate shall be taken in execution by any creditor of the deceased, it shall be deemed unfaithful administration, and such executor or administrator will be liable in an action on his bond for all damages occasioned thereby. *Ibid. 66.*

The bond of any executor or administrator neglecting to render an account when duly cited by the judge, may be put in suit, and if he persist in such neglect, judgment will be rendered against him, and he will be held liable as if he had been an executor in his own wrong. *Ibid. 67.*

*Limitation of Suits against Administrator.*

No executor or administrator will be held to answer to the suit of any creditor of the deceased, within one year after the giving of the administration bond, unless it be for the recovery

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\* In Massachusetts and New Hampshire the time is one year.

of a demand that would not be affected by the insolvency of the estate, or unless such suit be brought after the estate has been represented insolvent for the purpose of ascertaining a contested claim. *M. R. S.* 66.

An administrator is bound to account for funds received more than twenty years after the distribution of the estate.

In order to expedite the settlement of estates, as well as to relieve executors and administrators from vexation and uncertainty, the time is limited, within which all creditors, whose debts are due and payable, must present their claims or be forever barred.\*

But there may be other demands, neither due nor payable during the liability of the executor or administrator, such as covenants and contracts not broken, but which may afterwards be broken. The provision for these is, that an action may be brought upon them, against those who inherit the estate, within one year from the actual accruing of the right of action.

But those debts which are due but not payable within such time, may be filed in the probate office, and the executor or administrator may retain assets in his hands sufficient to discharge them, unless the heirs will take upon themselves the payment, or give a bond with sureties to the executor or administrator conditioned to refund the amount so paid, or as much thereof as may be necessary, and to indemnify the executor or administrator against all loss or damage on account of such payment.

### *Insolvency of the Estate.*

If the administrator pay debts in full, believing the estate solvent, and new claims come in and render the estate insolvent, he may recover back the excess of what he has paid over the creditors' equal proportion. So, if the general legatees have been paid, they are bound to refund a rateable part.

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\* In *Massachusetts* the time is limited to two years from the date of the bond. *M. L.*, p. 29, 1852.

But if assets come into the executor's or administrator's hands after the expiration of the [two] years, he shall account for and apply the same in like manner, as if they had been received within the [two] years; and he shall be liable to an action of law on account of such new assets by or for the benefit of any creditor, provided the action be commenced within one year after the creditor shall have received notice of the receipt of such new assets, and not more than [two] years after the same shall be actually received. *Mass. R. S. s. 4, c. 66.*

1. Whenever any executor or administrator shall die, resign, or be removed, without having fully administered the estate of the deceased, and a new administrator shall be appointed, such new administrator shall be liable to the action of the creditors for the space of two years from the date of his bond. *Mass. Laws, p. 29, 1852.*

2. If in any action duly commenced before the expiration of the two years, the writ shall fail of a sufficient service or return by any unavoidable accident, or if the writ be abated or defeated by any defect in the form, or of a mistake in the form of proceeding, or if, after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff be reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or reversal of judgment.—*Ib.* 23, 1855.

An administrator of an insolvent estate is not bound nor has he a right, for the benefit of the widow and heirs, to apply the personal assets to the redemption of a mortgage made by the intestate; the creditor's lien on the personal estate being paramount to their claims. 5 *Pick. R.* 146.

If either before the sale of the real estate or after, there should be debts exhibited to the administrator against the estate, exceeding the whole amount of the inventory, or sufficient to render it highly probable that the estate will eventually be insolvent, he should prepare a list of all the debts against the deceased's estate within his knowledge, stating each creditor's name, and the amount due him; also the widow's allowance, if any, and the probable charges of administration in settling the estate; and also the amount of property in his hands to be administered, and present the same to the Judge of Probate, with a representation of insolvency.

If it shall appear to the judge from the representation of the executor or administrator, that the estate of the deceased is probably insolvent, he will appoint commissioners to examine all claims, and return to the probate court a list thereof with the sum they have allowed on each claim, within six months, (or eighteen months, if so much is required) from the date of the commission. Appeals may be made from the decision of the commissioners to the courts of common law. After thirty days from the return of the commissioners, the judge will order a distribution of the effects among the creditors, and if the whole assets are not then distributed, further distribution will be made as the judge shall order. *M. R. S.* 68.

### *Distribution of the Estate.*

Until the executor or administrator is required to settle his account of administration, no decree of distribution can be made, nor suit commenced against the administrator until he has been so required and cited by the Judge of Probate to appear and render his account.

After payment of all the debts the remainder of the estate is to be distributed agreeably to law, or the will of the testator, or both.

Distribution is made according to the law of the state to which the deceased at his death was a subject.

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#### *Distribution of Personal Estate of intestate in Massachusetts.*

When any person dies without having disposed of his personal property by will, it shall be applied and distributed as follows:—

1. The articles of apparel and ornament of the widow, and the apparel of minor children of a deceased person, shall belong to them respectively.
2. Such parts of the personal estate of one deceased, as the probate court, having regard to all the circumstances, may allow as necessities to his

*Estates in Dower.*

In all the states (except California, where the right of dower and the husband's tenancy by the curtesy is abolished), every married woman is endowed for life, to an *interest* of *one-third* part in all the lands and tenements, or *real estate*, of her husband,—to be assigned to her after his decease, unless she is lawfully barred thereof.

This right is paramount to debts and all other claims.

By the common law no act of the husband alone, after marriage, can deprive the widow of her dower. But she may release it by joining her husband in conveyances of the estate, or by releasing the same by a subsequent deed; or dower may be barred by a jointure settled on her, with her assent, before marriage; or by any pecuniary provision made in lieu of dower.

widow, for herself and family under her care, or if there is no widow, to his minor children, not exceeding fifty dollars to any child, and also such provisions and other articles, as shall be necessary for the reasonable sustenance of his family, and the use of the house and furniture therein, for forty days after death, shall not be taken as assets for the payment of debts, legacies, or charges of administration.

The remainder shall be applied to pay his funeral charges, settling his estate, and paying his debts:

The residue shall be distributed among the same persons who would be entitled to the real estate, and in the same proportion as there prescribed, except as is herein provided:

1. If the intestate was a married woman, her husband shall be entitled to the whole of the residue;

2. If the intestate leaves a widow and issue, the widow shall be entitled to one-third of the residue;

4. If there is no issue, the widow shall be entitled to the residue to the amount of five thousand dollars, and to one-half the excess of such residue above ten thousand dollars;

5. If there is no husband, widow or kindred of the intestate, the whole shall go to the Commonwealth;

6. If the intestate leaves a widow and issue, any advancement which has been made to the issue is not to be computed in the distribution to the widow. But she shall be entitled only to the third part of the said residue, after deducting the value of the advancement.

*General Rules of Descent in Massachusetts.*

When a person dies seized of real property, without having devised the same, it shall descend, subject to his debts, (excepting homestead,) in the manner following:—

1. In equal shares to his children and the issue of any deceased child, by right of representation; and if there is no child of intestate living at his death, then to all his other lineal descendants; if all the descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation.

2. If he leaves no issue the estate shall go to the father:

3. If he leaves no issue, nor father, his estate shall go in equal shares to his mother, if living, and his brothers and sisters, and to the children of any deceased brother or sister, by right of representation:

4. If he leaves no issue, nor father, and no brother nor sister, living at his death, then to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters:

5. If he leaves no issue, father, mother, brother nor sister, then to his next of kin in equal degree:

er, if assented to by her before marriage; and also by provision in the will of her husband in lieu of dower, if accepted by her within a certain time after probate of will. She may make her election but cannot take both.

A husband cannot deprive his wife of her right to dower, for it is not he that gives her such right, but the law.

It is well understood by the common law, and the principle has been repeatedly settled in this court, that the dower of the widow is not to be assigned, so as to give her one third of the land in quantity, but so that she may enjoy one third of the rents and profits or income of the estate. 15 M. R. 167.

A widow cannot make a valid conveyance of her right of dower until it has been assigned her according to law.

Besides her right of dower in real estate, she is entitled, after payment of the debts, to a certain portion of the personal property. — [See title "*Rights in Property of Married Women*," in *TRADER'S GUIDE*, one of this series, pp. 131, *et seq.*]

### *Advancement.*

The true notion of an advancement is a giving, by anticipation, the whole or a part, of what it is supposed a child will be entitled to on the death of the parent, or the party making the advancement. In Massachusetts it must be proved to have been intended as an advancement, chargeable on the child's share of the estate by written evidence of the parent's intention to that effect. But an acknowledgment of full satisfaction, and a release of all claim, by the child, will have the same operation. An advancement made to a child, who dies before the parent, will be allowed against the grandchildren. A debt due from a child is not an advancement, though charged in the form of a book debt, unless the parent by his will so direct.

### *Tenant by Curtesy*

At common law, is, where a man's wife seized in fee has issue by him *born alive*, which, by any possibility, may inherit, and the wife dies; when the husband holds the lands during his life, and is called tenant by the curtesy. This law exists in most of the states, but in some it is modified or abolished.

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8. If the intestate leaves a widow and no kindred, his estate shall descend to his widow; and if the intestate is a married woman and leaves no kindred, her estate shall descend to her husband:

9. If intestate shall leave no kindred, the estate goes to the Commonwealth. An illegitimate child shall inherit the estate of his mother; but can claim no part of the estate of any of her kindred; and the mother shall inherit the estate of an illegitimate child, who shall die without lawful issue.

When, after the birth of an illegitimate child, his parents shall intermarry, and the father shall acknowledge him as his child, such child shall be considered legitimate.

The degrees of kindred shall be computed according to the rules of the civil law. The kindred of half blood shall inherit equally with those of the whole blood in the same degree.

## ADMINISTRATORS' FORMS.

The law has not prescribed any particular form for petitions and applications to the judge of probate. Blank Forms of Petitions, and other Instruments, can usually be obtained at the Probate Office. Each court has its peculiar forms, and the Judges prefer that those should be used which have been adopted by the Court.

—

*Form of Petition for Administration, by a Widow.*

TO THE HONORABLE JUDGE OF THE COURT OF PROBATE, with-  
in the County of —.

The petition of A. B. of —, in said county of —, widow, respectfully represents that G. B., merchant, was last an inhabitant of —, in said county, and died on or about the — August last, intestate, leaving goods and estate, of which administration is necessary; that your petitioner is the widow of said deceased, and is ready to give bonds with sufficient sureties for the faithful discharge of that trust.

Wherefore she prays that your honor would grant her administration on the estate of said deceased, agreeably to law in such case made and provided.

Dated at —, this — day of —, in the year 185 . A. B.

, ss.

At a Probate Court held at —, in said county, on Monday, the — day of —, in the year one thousand eight hundred and fifty —. The foregoing petition being duly considered, it is thereupon decreed by the court here that administration on the estate of the said deceased, as therein prayed for, be granted to the said A. B., she giving bonds according to law for the faithful discharge of that trust.

C. D., Judge of Probate.

—

*Petition for Administration by a Husband on his Wife's Estate.*

TO THE HONORABLE &c.

The petition of A. B. of —, in said county of —, respectfully represents that C. D., late wife of your petitioner, died on the — day of May last, intestate, leaving goods and estate, of which administration is necessary; that your petitioner was the husband of said C. B. at the time of her death, and is ready to give bonds, with sufficient sureties for the faithful discharge of that trust.

Wherefore, &c. (Same as above.)

—

*Petition of a Creditor, when the Widow and next of kin neglect or refuse to take out Administration.*

TO THE HONORABLE JUDGE &c.

The petition of A. B. of —, in said county, merchant, respectfully represents that C. D., merchant, was last an inhabitant of —, in said county, and died on the — day of —, intestate, leaving goods and estate, of which administration is necessary; that more than thirty days have expired since his death; that the widow and next of kin of said de-



ceased have hitherto neglected to take administration upon his estate; that your petitioner is one of the principal creditors to said estate.

Wherefore your petitioner prays that the widow and next of kin may be cited to take administration upon his estate, or shew cause why the same should not be granted to your petitioner, or some other suitable person.

Dated at B. this — day of —, A. D., 185—.

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*Petition of the next of kin when the Widow waives her right,  
with the Certificate of waiver.*

TO THE HONORABLE JUDGE &c.

The petition of A. B. of —, in said county, merchant, respectfully represents that C. D., merchant, was last an inhabitant of —, in said county, and died on the — day of —, intestate, leaving goods and estate, of which administration is necessary; that your petitioner is next of kin of said deceased, and has been requested by his widow to assume said trust, (or other cause as the case may be,) and is ready to give bonds with sufficient sureties for the faithful discharge of that trust.

Wherefore he prays that your honor will grant him administration on the estate of said deceased, agreeably to law in such case made and provided.

Dated at B. this — day of —, A. D., 185—

NOTE. If the children, or any of them, are of age, or if no children, the next of kin entitled by law next after the widow to administration, as father, mother, uncle, aunt, &c., may signify their consent also in writing, and then say, she with the children, (or father, or mother of the deceased, as the case requires) as by their certificate annexed, have declined to administer on said estate, and requested your petitioner, and so on as above.

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*Certificate for a Widow, or Widow and next of kin declining to  
Administer,—to be annexed to the above Petition.*

TO THE HONORABLE JUDGE &c.

The subscriber, widow of A. B., merchant, late of —, in said county, deceased, intestate, hereby declines the administration of his estate, and requests that C. D., merchant, of —, in the county of — may be appointed to that trust.

C. B., widow of the deceased.

NOTE. If there be children of age, or next of kin who petition with the widow in her certificate, then say, we, the subscribers, widow and children, or widow and father, or mother, &c., [as the case may be] of A. B., merchant, late of —, in &c., as above.

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*A Certificate of a Widow and Heirs approving of an account of  
Administration.*

This may certify that we, the subscribers, the widow and heirs at law of the estate of A. B., merchant, late of —, in the county of —, deceased, intestate, having examined the foregoing account of administration, are satisfied that it is just and true, and have no objection to the same being allowed.

C. B., widow, H. G. and E. F., heirs.

Dated, &c.

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*Form of Petition for sale of Personal Estate.*

TO THE HONORABLE JUDGE, &c.

The petition of A. B., merchant of —, administrator of the goods and estate of C. D., merchant, late of —, in the county of —, de-

ceased, testate; that it would be more for the benefit of those concerned in the estate of said deceased, that the personal estate of said deceased, should be sold at public or private sale, [as the case may be] than to hold the said administrator to account for the same, according to the appraisal thereof in the inventory of said estate.

Wherefore the said petitioner prays that your honor would order the estate to be sold at —, according to law in such case made and provided.

Dated at —, day of —, 185—.

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*Petition of an Administrator for further time to exhibit and settle his account of Administration.*

TO THE HONORABLE JUDGE &c.

The petition of C. D., merchant, of —, in the county of —, administrator on the goods and estate of E. F., merchant, late of —, in the county of —, intestate, respectfully represents, that your petitioner was allowed — from the — day of — to exhibit and settle his account of administration, that said term of time has nearly expired (*here state the reason.*) Your petitioner therefore prays that the further time of — may be allowed him to settle said account.

Dated, &c.

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*Complaint of an Administrator against persons suspected of concealing Goods of deceased persons, Lunatics, &c.*

TO THE HONORABLE JUDGE &c.,

The petition of C. D., merchant, of —, in the county of —, executor [or administrator] of the estate of A. B., merchant, late of —, in the county of —, deceased, respectfully represents and complains upon oath, that he has good cause to suspect, and doth suspect, that E. F., merchant, of —, in the county of —, has concealed, embezzled, or conveyed away — part of the estate of said deceased, [or estate of, &c.] Wherefore he prays that the said E. F. may be cited to appear before your honor, to be examined concerning the premises, or otherwise dealt with, as the law in such case directs.

Dated &c..

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*Administrator's Petition for Distribution of Estate.*

TO THE HONORABLE JUDGE &c.

The petition of A. B., of —, in said county of —, respectfully represents, that he is administrator of the goods and estate of C. D., late of B. in said county of —, deceased, intestate, and that he has settled his account of administration of the estate of said deceased; and the residue of the personal estate remaining in his hands amounts to the sum of — dollars, to be distributed — the — of said deceased, and that —

Your petitioner therefore prays that distribution of said residue may be decreed to him agreeably to law.

Dated at B., this — day of —, in the year 185—

*Complaint of an Administrator against one who has been entrusted with Estate of the deceased, and refuses to account.*

TO THE HONORABLE JUDGE, &c.

Complains upon oath C. D., merchant, executor of the last will and testament (or administrator of the goods and estate) of A. B., merchant, late of —, in the county of —, deceased, that he some time since entrusted E. F., merchant, of —, in the county of —, with estate of the said A. B., and that the said E. F. hath refused to render account thereof to your complainant, although he hath been requested so to do. Wherefore he prays that the said E. F., may be cited to appear before your honor, to render such account as by law he ought.

Dated, &c.

*Petition of a Widow for Allowance out of Personal Estate.*

TO THE HONORABLE JUDGE, &c.

The petition of C. F., widow of —, in the county of —, respectfully represents that C. D., merchant, is administrator of the goods and estate of E. F., merchant, late of —, in the county of —, deceased, intestate; that she was the lawful married wife of the said E. F. at the time of his death; that the personal estate of said deceased will not be sufficient to pay his just debts and funeral charges, (or that there will be little or no surplus left); and that she is nevertheless entitled to her apparel and such other of the personal estate of said deceased, as your honor shall determine necessary, according to her quality and degree.

Wherefore the said widow prays your honor to allow her such part of the personal estate of said deceased, as you shall adjudge fit and reasonable pursuant to the law in such cases made and provided.

*Petition of Heirs at Law, &c., where an Executor or Administrator refuses or neglects to settle his Account.*

TO THE HONORABLE JUDGE, &c.

The petition of A. B., of —, in the county of —, respectfully represents, that C. D., merchant, of —, in the county of —, on the — day of —, 185—, was appointed executor [or administrator] on the goods and estate of E. F., merchant, late of —, in the county of —, deceased, testate, [or intestate] that for more than — months, said executor [or administrator,] has refused and neglected to settle his account of administration; that your petitioner is heir at law, and entitled to his distributive share in said estate, [or is a legatee, and entitled to his legacy out of said estate.]

Wherefore your petitioner prays that said executor [or administrator] may be cited to render his account of administration agreeable to law.

*Resignation of Executor.*

TO THE HONORABLE JUDGE, &c.

I, the subscriber, named executor in the last will and testament of A. B., of —, merchant, who last dwelt in —, in said county, and died within — days last past, decline and refuse to accept that trust.

Dated, &c.

C. D.

## ADMINISTRATOR'S (OR EXECUTOR'S) ACCOUNT.

*The FIRST ACCOUNT\* of A. B., Administrator of the Goods and Estate of C. D., late of N., in the County of M., Farmer, deceased, intestate.\**

|         |                                                                                                                                             | DR.     |    | CR.        |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------|---------|----|------------|
| 1857.   | Said Administrator charges himself:—                                                                                                        |         |    |            |
| Jan. 1. | With the amount of personal estate of the deceased, which by the appraisement thereof, appears in the Inventory to be of the value of - - - | \$ 4570 | 38 |            |
|         | With the sum for which the same was sold above the appraisement, - - -                                                                      | 50      | 50 |            |
|         | With the several sums collected and received as stated in the schedule annexed, marked A, - -                                               | 150     | 00 |            |
| <hr/>   |                                                                                                                                             |         |    |            |
| July 1. | Said Administrator claims allowance for the following payments and charges:—                                                                |         |    |            |
|         | For funeral expenses, as per receipts, - -                                                                                                  | -       |    | \$ 40 38   |
|         | For sundry payments made, as stated in schedule B.                                                                                          | -       |    | 700 00     |
|         | Paid Probate Fees, - - -                                                                                                                    | -       |    | 50 00      |
|         | Paid E. F., attorney, for stating this account, -                                                                                           | -       |    | 4 00       |
|         | My charge for settling the estate, - - -                                                                                                    | -       |    | 50 00      |
|         | Balance in favor of the estate in my hands, -                                                                                               | -       |    | 3926 00    |
|         |                                                                                                                                             | \$ 4770 | 88 | \$ 4770 88 |

NOTE.—An Administrator is appointed by the Probate Court, or other similar tribunal, to administer the estate of an **INTESTATE**, that is, of a deceased person, who has left no will. The widow, or the next of kin, is entitled to be administrator, and in default of these a creditor. No one can administer unless interested in the estate. Executors and Administrators must prove the will, give bond for the performance of their trust, and make an inventory of the goods and estate, collect and pay the debts, and deliver over the residue of the estate to those entitled to receive it. An Administrator, or Executor, is allowed by statute provision, or custom, from 2 1-2 to 5 per cent. for settling the estate.

\* The Second Account should commence with a charge of the balance of the old account, and proceed as above. The Final Account should be designated as the Second, Third, & Fourth, &c., and Last Account of A. B., Administrator, &c.

\* Instead of the words [Administrator of the Goods and Estate,] say "Executor of the last Will and Testament"—and "testate" in place of "intestate"—if it be so.

## INVENTORY, BY APPRAISERS.

*A true and perfect Inventory and just Appraisement of the Goods, Estate, Rights, and Credits, which were of A. B., late of W., Farmer, deceased, intestate.*

|                                          |         |            |
|------------------------------------------|---------|------------|
| The Homestead, - - - - -                 | \$ 1500 | 00         |
| 100 Acres of Land, at \$20.00, - - - - - | 2000    | 00         |
| 2 Yoke of Oxen, at \$40.00, - - - - -    | 80      | 00         |
| 7 Cows, at \$20.00, - - - - -            | 140     | 00         |
| 1 Horse and Harness, - - - - -           | 150     | 00         |
| 1 Wagon and Cart, - - - - -              | 150     | 00         |
| Sundry other Farming tools, - - - - -    | 150     | 00         |
| 12 Chairs, - - - - -                     | 12      | 00         |
| 3 Tables, - - - - -                      | 15      | 00         |
| 3 Beds, Bedsteads, and Bedding, *        | 50      | 00         |
|                                          |         | \$ 4247 00 |

Taken and appraised by us, the subscribers, the tenth day of July, A. D. 1857.

C. D.  
E. F.  
G. H.

W— County, ss.

On the tenth of July, 1857, before me the subscriber, one of the Justices of the Peace in and for said county, came the above named C. D., E. F., and G. H., who being qualified according to law, do declare that the above Inventory contains a just and true appraisement of the Goods, Estate, Chattels, Rights and Credits of the said A. B., deceased, so far as the same came to their knowledge.

Witness my hand and seal the day and year above written. I. K., J. P. [L. S.]

## THE PRESENT VALUE OF A WIDOW'S DOWER.

The CARLISLE TABLE of the EXPECTATION of LIFE, (which is in general use in England, and has been adopted by some of the Life Insurance Companies in this Country,) differs from the Table below in the first 44 years of life—but between the ages of 44 and 92 the variation, if any, is trifling.

Should the widow and her children, or other heirs, deem it expedient to sell the estate entire, it can be ascertained by the following Tables to what proportion of the proceeds the widow will be entitled.

The following Table gives the Expectation of Life, according to Dr. Wigglesworth's Table of Mortality, (adopted by the Supreme Court of Massachusetts as a rule of estimating the value of life estates.—10 Mass. Rep. 313.)

TABLE I.—EXPECTATION OF LIFE.

| Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. | Age. | Expectation in years and 100ths. |
|------|----------------------------------|------|----------------------------------|------|----------------------------------|------|----------------------------------|------|----------------------------------|------|----------------------------------|------|----------------------------------|
| 0    | 28.15                            | 10   | 35.76                            | 20   | 29.43                            | 40   | 22.27                            | 60   | 13.05                            | 80   | 5.85                             |      |                                  |
| 1    | 36.78                            | 17   | 35.37                            | 21   | 29.02                            | 49   | 21.72                            | 65   | 12.43                            | 81   | 5.50                             |      |                                  |
| 2    | 38.74                            | 18   | 34.98                            | 34   | 28.62                            | 50   | 21.17                            | 66   | 11.96                            | 82   | 5.16                             |      |                                  |
| 3    | 40.01                            | 19   | 34.59                            | 35   | 28.22                            | 51   | 20.61                            | 67   | 11.48                            | 83   | 4.87                             |      |                                  |
| 4    | 40.73                            | 20   | 34.22                            | 36   | 27.78                            | 52   | 20.05                            | 68   | 11.01                            | 84   | 4.66                             |      |                                  |
| 5    | 40.88                            | 21   | 33.84                            | 37   | 27.34                            | 53   | 19.49                            | 69   | 11.50                            | 85   | 4.57                             |      |                                  |
| 6    | 40.69                            | 22   | 33.46                            | 38   | 26.91                            | 54   | 18.92                            | 70   | 10.06                            | 86   | 4.21                             |      |                                  |
| 7    | 40.47                            | 23   | 33.08                            | 39   | 26.47                            | 55   | 18.35                            | 71   | 9.60                             | 87   | 3.90                             |      |                                  |
| 8    | 40.14                            | 24   | 32.70                            | 40   | 26.04                            | 56   | 17.78                            | 72   | 9.14                             | 88   | 3.67                             |      |                                  |
| 9    | 39.72                            | 25   | 32.33                            | 41   | 25.61                            | 57   | 17.20                            | 73   | 8.69                             | 89   | 3.56                             |      |                                  |
| 10   | 39.23                            | 26   | 31.93                            | 42   | 25.19                            | 58   | 16.63                            | 74   | 8.25                             | 90   | 3.73                             |      |                                  |
| 11   | 38.64                            | 27   | 31.50                            | 43   | 24.77                            | 59   | 16.04                            | 75   | 7.83                             | 91   | 3.32                             |      |                                  |
| 12   | 38.02                            | 28   | 31.08                            | 44   | 24.35                            | 60   | 15.45                            | 76   | 7.40                             | 92   | 3.12                             |      |                                  |
| 13   | 37.41                            | 29   | 30.66                            | 45   | 23.92                            | 61   | 14.86                            | 77   | 6.99                             | 93   | 2.40                             |      |                                  |
| 14   | 36.79                            | 30   | 30.25                            | 46   | 23.37                            | 62   | 14.26                            | 78   | 6.59                             | 94   | 1.98                             |      |                                  |
| 15   | 36.17                            | 31   | 29.83                            | 47   | 22.83                            | 63   | 13.66                            | 79   | 6.21                             | 95   | 1.62                             |      |                                  |

The following Table shows the value of an Annuity of One Dollar from 1 to 35 Years, at Five per cent. per annum, and, with the Table above, will enable any person to estimate the value of a Widow's Dower.

| Years. | Dollars. Cents. Hundredths. | Years. | Dollars. Cents. Hundredths. | Years. | Dollars. Cents. Hundredths. | Years. | Dollars. Cents. Hundredths. | Years. | Dollars. Cents. Hundredths. |
|--------|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|-----------------------------|--------|-----------------------------|
| 1      | .9523                       | 8      | 6.4632                      | 15     | 10.3796                     | 22     | 13.1630                     | 29     | 15.1410                     |
| 2      | 1.8594                      | 9      | 7.1078                      | 16     | 10.8377                     | 23     | 13.4880                     | 30     | 15.3724                     |
| 3      | 2.7232                      | 10     | 7.7217                      | 17     | 11.2740                     | 24     | 13.7986                     | 31     | 15.5928                     |
| 4      | 3.5459                      | 11     | 8.3064                      | 18     | 11.6895                     | 25     | 14.0939                     | 32     | 15.8026                     |
| 5      | 4.3294                      | 12     | 8.8632                      | 19     | 12.0853                     | 26     | 14.3751                     | 33     | 16.0025                     |
| 6      | 5.0756                      | 13     | 9.3935                      | 20     | 12.4622                     | 27     | 14.6430                     | 34     | 16.1929                     |
| 7      | 5.7863                      | 14     | 9.8986                      | 21     | 12.8211                     | 28     | 14.8981                     | 35     | 16.3741                     |

*Rule.* Suppose that a widow 70 years old has an interest in an estate yielding \$10 annually,—what is her *present* interest, (or dower) worth? By the *first* table her expectation of life is 10 years. The *second* table shows that the value of \$1 for 10 years is worth \$ 7.7217, which amount multiplied by [X] 10 equals [=] \$ 77.21, the value of the widow's dower for 10 years.

Or, what is the value of a salary or annuity of \$100 a year for 5 years? Multiply the tabular number opposite 5 years by the given annuity, as follows: 4.3294 × 100 = \$432.94,—the value of an annuity of \$100 for 5 years.

## GUARDIANS AND MINORS.

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*Guardianship.*

Guardians, in the United States are, *first*, by Common Law ; *second*, by Statute Law. The guardian is one who has the care and management of the person, or estate, or both of his ward, whether idiot, minor, non-compos, or spendthrift. Guardians by common law, are only by nature. The father is guardian by nature, of his child, and after his death the mother, and on her death, the next of kin. 2 Dane's Ab. c. 35.

Though the mother is guardian by nature of her legitimate child, after the death of her husband, yet if she afterward marry, her right of guardianship will not devolve on her husband. Because, if the right devolved, the duty to support him must devolve also ; but it is clear, that the father-in-law is not obliged to maintain his children-in-law, whether the mother be living or dead, nor is he entitled to the earnings of such children.

But the mother of an illegitimate child has a right to the custody and control of her illegitimate child, and is bound to maintain him, as his natural guardian. And the natural guardianship of the mother of such bastard child devolves on her husband, on the marriage, in the same manner as an executorship or guardianship derived from the authority of the probate court, and the husband's power depending on the marriage, ceases on its dissolution. 2 Mass. R. 109.

Parents are under obligations to support their children, and are consequently entitled to their earnings while under age. And parents may transfer this right, or authorize those who employ their children to pay them their own earnings, and the payment will be a discharge against their parents. 2 Mass. R. 113.

An infant, if his father is dead, and his mother again married, is entitled to his own earnings, and may sue for, and recover them. 4 Mass. R. 675. But where children have property of their own, their mother is not obliged to support them. *Ibid.* 97.

A guardian by nature has no power to lease land belonging to his infant child, and such lease was held void. 2 M. R. 55.

The guardian by common law is bound to take care of, and faithfully to manage, and account for the property of the minor under his or her guardianship, if he meddle with the property of such minor ; but he is not bound to take care of it if he decline to have any thing to do with it, for no one is guardian against his

consent ; but any interference with the property will make the person intermeddling accountable and for due care as bailiff or receiver. 2 Dane's Ab. c. 35.

The guardianship of the father, which is a guardianship by nature, continues till the son and heir attain to the age of twenty-one years ; but that is with respect to the body only. 3 Bac. Ab. tit. Guard. A.

The relation of guardian and ward is nearly allied to that of parent and child. It applies to children during their minority, and may exist during the lives of the parents if the infant becomes vested with property ; but it usually takes place on the death of the father, and the guardian is intended to supply his place. 2 Kent's Com. 216.

An infant has a right to consider any person as his guardian, bailiff, or trustee, who enters upon his land and receives the proceeds, and may compel him to account for the same in a court of chancery. 4 Blackf. 331.

The guardian's trust is one of obligation and duty, and not of speculation and profit. He cannot reap any benefit from the use of the ward's money. He cannot act for his own benefit in any contract, or purchase, or sale, as to the subject of the trust. If he settles a debt upon beneficial terms, or purchase it at a discount, the advantage is to accrue entirely to the infant's benefit. 2 Kent's Com. 229.

A guardian cannot be sued, in his capacity of guardian, so as to make the estate of his ward liable to be taken in execution. For the judgment is not against the goods and estate of the ward in his hands, but against himself. 5 Mass. R. 299.

If a person gives a promissory note, as guardian, he is liable personally for the payment of it. For as an administrator cannot, by his promise, bind the estate of his intestate, so neither can the guardian, by his contract, bind the person or estate of his ward. 6 Mass. R. 58.

A guardian cannot make his ward liable to an action, as on his own contract, by any promise which the guardian himself can make. 5 Mass. R. 299.

But if a guardian gives his notes, as guardian, in discharge of debts due from his ward, he may lawfully indemnify himself out of the estate of his ward ; and this he may do, even after he is discharged from his guardianship, by action for money paid to the use of the ward, in the same manner, as if, instead of giving his notes, he had paid the debts with his own money. *Ibid.*

Guardians are liable to be taxed for the property of their wards, in their possession ; and on neglect or refusal to pay such taxes, the same remedies lie against them, as if they neglected or refused to pay the taxes on their own estate. 13 M. R. 493.

If a guardian refuse to account to the judge of probate, when cited for that purpose, he has broken the condition of his bond,

although there should be nothing due from him to his ward, but on the contrary, something is due from the ward to him. 4 Mass. Rep. 106.

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### *Rights and Duties of the Parent.*

It is the duty of the parents to maintain and educate their children during infancy, and make suitable provision for them after they arrive at the age of majority. 2 Kent, 189.

The husband is not liable for the expense of the maintenance of the child of the wife by a former husband. If, however, he take the wife's child into his own house, he is then responsible for its education and maintenance as long as it lives with him. 4 East, 82.

A father is not bound by the contract of his son even for necessities, unless an actual authority be proved, or the circumstances be sufficient to imply one. 2 Kent, 191.

If the father suffer the children to remain abroad with their mother, or if he force them from home by severe usage, he is liable for their necessities. 3 Day's Rep. 37.

The father is entitled to the custody of his minor children, and to the value of their services and labor. Reeve's Dom. Rel. 270. This right is perfect while the child is under fourteen years of age, and continues until the age of majority.

When the father has but little property, he is entitled to an allowance from the children's towards their support. 4 M. R. 97.

If a man live away from his family, and provide for their support in a particular manner, he is not liable otherwise. 11 Wend. 33.

When a child voluntarily leaves a parent, he carries no credit with him. 16 Mass. R. 28.

If a father neglect to furnish necessities for his minor children, the law will imply a promise by him to pay any person who may furnish them. 8 N. H. Rep. 350. But in such case there must be palpable neglect. *Ibid.*

The custody of minors is given to their parents for their maintenance, protection and education; and if a parent, overlooking all these objects, should, to answer his own mercenary views, bind his child as an apprentice, upon terms evidently injurious to his interests, it would be difficult to enforce such a contract. 1 Mason C. C. R. 71.

Parents may transfer their right, or authorize those who employ their children to pay them their own earnings; and in such case, the payment will be a discharge against the parents. 12 Mass. Rep. 375.

Though the parents are entitled to the possession of their minor children, yet that right may be forfeited by ill-treatment, improvidence, &c. 2 T. R. 26.



*Rights and Duties of the Child.*

Children owe obedience to their parents during their minority. 2 Kent, 192.

When a minor makes a contract for his services on his own account, his father not objecting, this will be considered an implied consent on the part of the father, for the child to have his earnings, and the father consequently has no claim thereto. 2 Pick. Mass. R. 201.

When the father had by indenture of apprenticeship, relinquished all claim to the earnings of the son, till his age of twenty-one, the minor alone was entitled to the earnings; and it was also held, that the creditors of the father could not attach them by a process of foreign attachment. 5 Wend. 206.

A mother, who is executrix, may charge her minor children for their board, and credit them their services. 3 Bibb's R. 456.

A child and heir to his father, may sue for property in possession of his step-father. 7 Wend. 354.

If a son continue to labor for a parent with a view to a recompense by will, he cannot sue for it. 3 Rawle, 243.

A promise by a son to support a parent on receiving a consideration therefor, and for necessities furnished by a father, will render him liable. 5 Wend. 558; 7 Conn. R. 57.

A father may claim the services of his children, whilst they are under lawful age, and are supported by him. But should he, at any time, relinquish the profits of his children's labor then they belong to themselves, and cannot be seized by the creditors of the father. 2 Blackf. 440.

If a father voluntarily send his minor children away from home, to obtain a maintenance and support, in any manner they can, this is an implied consent to any contract for that purpose into which they may enter, and a waiver of his parental rights. 1 Mason C. C. R. 71.

An infant whose father is dead, and whose mother is again married, is entitled to his own earnings, and may maintain an action to recover them. 4 Mass. R. 675.

Notwithstanding minor children have property of their own, the father is bound to support them, if he be of sufficient ability; but it is otherwise of the mother. 2 Mass. R. 450. But if the father be not of sufficient ability, he will be entitled to a sufficient compensation for their support, out of their own property. *Ibid.*

The marriage of a minor son removes him from the control of the father, and gives him a right to apply his earnings to the support of his family. 16 Mass. 204.

*Liabilities of Minors, or infants.*

Infants are bound for necessities or such articles as, under the circumstances in which they are placed, they actually need. 2 Kent, 239. Necessaries include victuals, clothing, medical aid, and good teaching. Co. Lit. 172.

The tradesman is bound to make due inquiries, and if the infant has been properly supplied by his friends, he will not be liable. Peake N. P. 239. If he live with his father or guardian, and their care and protection are duly exercised, he cannot bind himself even for necessities. 9 Johns. Rep. 141.

Necessaries furnished the infant's wife and children, are necessities for him. But the real value of the articles furnished, whether necessities or not, may at all times be inquired into. 9 Wend. 238.

An infant is liable for money paid at his request to satisfy a debt which he had contracted for necessities. 1 Denio's R. 460.

An infant is not liable for money borrowed, though expended by him for necessities, nor for money borrowed to buy necessities, where it was not so applied; but he is liable where the lender sees that the money is laid out for necessities, in the same manner as if the necessities had been directly furnished by the lender. *Ibid.*

An infant is likewise liable for money paid to procure his liberation from arrest on execution; and, also, on mesne process, when the arrest was for necessities. *Ibid.*

A surety on a note given by an infant, who pays the note, may recover the sum paid of an infant. 7 N. H. Rep. 368.

Money, a horse, saddle and bridle, furnished when he was one hundred and eighty miles from home and without either, are not necessities for which an infant is bound. 1 Bibb, 519.

If an infant do a right act which he was compellable to do, it will bind him. 2 Kent, 242.

Whatever an infant is bound to do by law, the general rule is, that the same will bind him, if he do it without a suit at law. Co. Lit. 172.

It is a general rule that infants are liable for their torts, such as slander, trespass, &c. 3 Rawle's Rep. 551. They are liable for tortiously converting goods entrusted to them, and for goods delivered to them on special contract for a specific purpose, and for money fraudulently embezzled. 1 Esp. R. 172.

Fraudulent acts will not be protected by infancy. If an infant pay money on his contract, and enjoy the benefit of it, and then avoid it when he comes of age, he cannot recover back the consideration paid. 8 Cowen's Rep. 84. And if he avoid an executed contract when he comes of age, he must restore the consideration which he had received. 1 Johns. Cas. 127. Where he obtained goods upon his false and fraudulent affirma-

tion that he was of age, though he avoided the payment of the price of the goods, on a plea of infancy, the vendor was entitled to reclaim the goods as having never parted with his property in them. 15 Mass. Rep. 359.

### *Void and Voidable Acts.*

When the court can pronounce the contract of an infant to be to his prejudice, it is void ; when to his benefit, as for necessities, it is good ; and when it is of an uncertain nature as to benefit or prejudice, it is voidable only at the election of the infant. 2 Kent, 236. Purchases made by an infant are voidable only. 14 Mass. R. 462.

A deed of bargain and sale executed by an infant for valuable consideration, is voidable, but not void. 7 Blackf. 442.

All gifts, grants, &c., of an infant which do not take effect by delivery of his hand, are void ; and if made to take effect by delivery of his hand, are voidable. 1 Leach C. C. L. 337.

Though a contract is voidable on the part of an infant, yet on the part of an adult contracting with him, it is binding. 1 Marsh. R. 76.

The contracts of an infant made as an agent, are binding on the principal. 1 Marsh. 438.

A warrant of attorney of an infant to confess judgment is void. 6 Conn. 393.

An infant will not be bound by a submission to arbitration. 6 Mass. 78.

### *How Confirmed or Avoided.*

Those acts of an infant which are voidable only, may be avoided upon his arriving at the age of majority, which is completed on the day preceding the anniversary of his birth. 1 Blacks. Com.

The authorities are not agreed as to what course should be taken by an infant to avoid a contract when he arrives at age. The weight of opinion is that, after a reasonable time has elapsed after majority, he must perform some act in disaffirmance of the contract.

In 11 Serg. & Rawle, 305, it was held that there were three modes of affirming the voidable contracts of infants. 1. By an express ratification. 2. By acts which reasonably imply an affirmance. 3. By the omission to disaffirm within a reasonable time.

An infant may ratify a contract after he becomes of age, even against the consent of the other party. 10 N. H. Rep. 222.

No one but the infant himself, or his legal representatives, can avoid his voidable acts. 13 Mass. Rep. 237.

If the act be voidable only, it is nevertheless binding on the

adult whom he dealt with, so long as it remains executory, and is not rescinded by the infant. 10 Serg. & Rawle, 114.

A contract by an infant for the sale of personal property, may be rescinded by him before he arrives at full age. 17 C. R. 481.

After such contract has been rescinded by the infant, and the title to the property has thus become vested in him, an action cannot be sustained against him for taking such property into his possession. *Ibid.*

If a bill of exchange be accepted by a person of full age, though drawn during his infancy, he is liable. 4 Camp. 164.

A female infant residing in Pennsylvania, executed there a deed of bargain and sale for land situate in this State. She afterwards married, but whether before or after her majority did not appear, nor did it appear where, after the execution of the deed, she and her husband had resided, nor that her husband had acquiesced in the deed after he knew of it. *He. d.*, that the lapse of about five years after the wife's majority, without any attempt to disaffirm the conveyance, did not, under the circumstances, prevent the husband and wife from disaffirming it. 7 Blackf. 442.

## LAWS AND FORMS OF WILLS.

### *Construction of Wills.*

The chief object in the construction of wills, is to gather the intention of the testator. But the intention meant, is an intention *legally* to dispose of property.

A will should be in writing, and signed by the testator, or by some person in his presence, and by his express direction.

A will must be attested, in the following states, by *three* or more competent witnesses:—Connecticut, Florida, Georgia, Louisiana (three if residents in the country, and five if not,) Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, Rhode Island, Oregon, South Carolina, Vermont, and District of Columbia.

A will must be attested, in the following states by *two* or more competent witnesses:—Alabama, Arkansas, California, Delaware, Illinois, Indiana, Iowa, Kentucky, Missouri, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin.

Witnesses must subscribe the will in presence of the testator; that is, within the view of the testator; though it is not necessary that he should actually see them. It is *prima facie* evidence

that the testator did see them subscribe, if he was so situated that he might have done so.

Two of three witnesses to a will, when signing it as such, being in a different room from the testatrix, and not in her presence, view, or hearing, although in a room connected by an intermediate room with that in which she was lying; this is not a signing by such witnesses in the presence of the testatrix. 2 Cush. 434.

An acknowledgment or recognition by the testator, express or implied, in the presence of the attesting witnesses of the signature of the will, is equivalent to actual signing. 17 Pick. 373.

No one interested in the will should be a witness. If a subscribing witness to a will, be a devisee or legatee, the devise or legacy to him is void. Creditors are, however, competent subscribing witnesses.

No particular form of words is necessary to constitute the publication of a will. Any act of declaration importing a solemn intent in the testator to dispose of his estate will be sufficient. In New York the law requires that the testator, at the time of making his subscription or of acknowledging the will, shall declare the instrument so subscribed to be his last will.

A devise in general terms, as, 'I devise my dwelling-house to A.,' without adding, 'and his heirs,' would only give to A. a life estate, unless from the language of some other part of the will it was manifest that the testator intended to give a greater interest in the house than a life estate.

A devise of "all the residue and remainder of any real estate" passes a fee, though no words of limitation or inheritance are added. 3 Met. 134.

A devise of all one's "estate" after payment of debts and legacies, passes a fee. 6 Met. 322.

It is generally necessary to mention in the will every person who would be entitled to share in the inheritance if there were no will. And this may be done where the testator intends to disinherit them, by naming each of them, and declaring that he shall give them nothing, with the reasons of such decision, or by giving each of them some nominal sum.

Any estate in lands, acquired by the testator, after the making of his will, shall pass thereby, in like manner, as if possessed at the time of making the will, if such shall appear by the will to have been the intention of the testator. M. R. S. c. 62.

A will may be revoked, by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his presence and by his direction, or by some other will or codicil, or by some other writing, signed, attested, and subscribed, in the manner of making a will. *ibid.*

Will may be deposited for safe keeping, in the registry of

probate, in a sealed wrapper, endorsed with the name of the testator, his place of residence, the day when and name of the person by whom it was delivered, and the name of the person to whom it is to be delivered after the death of the testator. *ibid.*

Possessor of a will must deliver the same into probate court within thirty days after testator's decease. *ibid.*

Will may be proved, when not objected to, on the testimony of one witness; although the other witnesses should be within reach of the process of the court. *ibid.*

In leaving small sums to minors, authorize some one to receive them, so as to avoid the need and expense of appointing guardians.—Also, insert a clause that in the sale of real estate, the purchaser shall not be held to see to the application of funds by executor or trustee.

## *Forms of Wills.*

### *Will of Real and Personal Estate.*

[See, also, Form of Will and directions for writing a Will, in "Business Man's Assistant," pages 64-66.]

*Know all Men by these Presents*, That I, A. B., of —, in the county of —, do make and publish this my last will and testament.

*First.* I give and devise to my eldest son, I. B., all my real estate in the town of —; to have and to hold the same to him, and his heirs and assigns forever.

*Second.* I give and devise to my second son, G. B., all my real estate in the town of —; to have and to hold the same to him, and his heirs and assigns forever.

*Third.* I give and devise to my daughter, M. B., my dwelling house and its appurtenances, in the city of B., in B. street, numbered 54; to have and to hold to her and her assigns, during her life, without impeachment of waste; and from and immediately after her decease I give and devise the same unto my third son, L. B., and his heirs and assigns forever.

*Fourth.* I give and bequeath to my daughter, C. M., wife of O. M., the sum of — dollars.

*Fifth.* I give and bequeath to my daughter, S. B., the sum of — dollars.

*Sixth.* I give and bequeath to my mother, I. B., the sum of — dollars. To be paid to them respectively within one year after my decease.

*Seventh.* I forgive unto L. M., the sum of — dollars out of the principal sum of — dollars, which he owes to me upon bond.

*Eighth.* I give and bequeath to my wife, E. B., during her life, the use, improvement and income of my dwelling-house, and its appurtenances, situated in M. street, with all the books, plate, pictures, furniture, and other personal property now therein contained, and after her decease I give and devise the same unto my youngest son, N. B., and his heirs and assigns forever.

*Ninth.* I appoint my wife, E. B., sole executrix of this will.

In witness whereof I have hereunto set my hand and seal this — day of —, eighteen hundred and fifty —.

A. B. [L. s.]

Signed, sealed, published, and declared by the said testator, as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have set our names hereto as subscribing witnesses.

G. A.  
L. M.  
N. O.

*Another Form of Will.*

*In the name of God, Amen, [or, Be it known,] I, A. B., of —, in the county of —, and state of —, being now confined to my house with a serious illness; but being nevertheless in the full possession of all my mental faculties, do make and publish this my last will and testament.*

*I commit my soul into the hands of my heavenly Father, trusting in his infinite goodness and mercy.*

*I direct that my mortal remains be buried in the family vault in M.*

*I wish to be buried without any show or ostentation, but in a manner respectful to my neighbors, whose kindness has contributed so much to the happiness of me and mine.*

*My affectionate wife, who has been to me a source of so much happiness, must be tenderly provided for. Care must be taken that she has some reasonable income.*

*I appoint my wife, C. B., and my son, E. B., and R. M., of —, to be the executors of this will.*

*I give and devise to G. N., G. W., and H. G., all my real estate in the towns of M. and F., to have and to hold the same to them and their heirs and assigns forever, upon the following trusts, namely:—*

*1st. To mortgage, sell, or lease so much thereof as may be necessary to pay to my wife, C. B., from the rents, profits, and income of the said two estates, the sum of eight hundred dollars per annum during her natural life.*

*2d. To hold, manage, and carry on the said two estates, or so much thereof as may not be sold for the purpose aforesaid, for the use of my son, E. B., during his natural life, and after his decease to convey the same in fee to such of his male descendants, as a majority of the said trustees may elect, they acting therein with my son's concurrence, if circumstances admit of his expressing his wishes, otherwise acting upon their own discretion.*

*I give to my said wife, during her life, the use of all the plate, pictures, furniture, and other personal property now in my mansion house in M., and after her decease to remain to my son E. B.*

*I give, devise, and bequeath to my said Executors all my other real and personal estate, except such as is hereinafter described and otherwise disposed of; to be applied to the execution of the general purposes of this will, and to be sold and disposed of, or held and used, as they and the said trustees may find to be expedient.*

*I give and bequeath to my son, E. B., all my library and books wherever situated, for his own use.*

*I give and bequeath to my son-in-law, S. W., my watch and chain for his own use.*

*I give and bequeath to my grand-daughter, G. B., the portrait of myself which now hangs in the front parlor at A., for her own use.*

*I give and bequeath to my grandson, F. B., my gold-headed cane, for his own use.*

*I give and bequeath to my friend, L. S., the clock, presented to me by G. B., for his own use.*

*I give and bequeath to my friend, M. N., my fishing tackle and fowling guns, for his own use.*

*I request that my said executors and trustees be not required to give bonds for the performance of their respective duties under this will.*

*In testimony whereof, I have hereunto set my hand and seal at M., and have published and declared this to be my last will and testament, on the — day of —, in the year eighteen hundred and fifty —.*

A. B. [L. s.]

*Signed, sealed, published, and declared by the said testator, as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have set our names hereto as subscribing witnesses.*

G. A.  
I. J.  
C. T.

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*Form of a Will given in Lovelass on Wills, 25 Law Library, 282.*

*This is the last will and testament of me, John Stiles, of Cheapside, in the city of London, linen-draper. I give, devise, and bequeath all my real and*

personal estate whatsoever and wheresoever, unto my wife, Mary Stiles, her heirs, executors, administrators, and assigns, for her and their own use and benefit.

And I appoint my said wife sole executrix of this my will, hereby revoking all other wills made by me at any time heretofore.

In witness whereof, I, the said John Stiles, have hereunto set my hand, this — day of —, in the year one thousand eight hundred and fifty —.

JOHN STILES.

Signed by the above named John Stiles, as and for his last will and testament, in the presence of us, present at the time, who in his presence, and in the presence of each other, have hereunto subscribed our names, as attesting witnesses thereto.

T. J.  
R. H.  
J. S.

NOTE.—As the laws of many of the states require three or more witnesses to make a will valid, it is safe to have that number in all cases; so, it is also advisable to annex a seal to a will, though not required by law in most of the states.

### *Decisions of Courts in relation to Wills.*

A gift or other disposition by a testator of property previously devised, is *pro tanto* a revocation of the will. 7 Monroe's Rep. 291.

A devise of real estate, without words of inheritance, passes a fee, if the devisee is personally charged in the will with the payment of money to third persons. 5 Met. 134.

Where an annuity is given by will, with a direction that it be paid quarter-yearly, the first payment is to be made at the end of three months after the testator's death. 6 Met. 194.

Where the words used in a will, if construed according to their technical force and meaning, would defeat the obvious intention of the testator, such a construction is not to be adopted. 1 Cush. 118.

Wills should be so construed as to carry out the intention of the testator so far as is consistent with the rules of law. If all its provisions cannot be sustained, it should be carried out so far as is consistent with law. A devise to be applied to the dissemination of the Gospel, at home and abroad, is valid, and the trustee should decide in the first instance, the mode of its appropriation. 7 Monroe's Rep. 617.

The language used by the testator furnishes an appropriate and peculiar means of ascertaining his intention; but the terms used are to be understood according to the interpretation which such terms have received in judicial determinations on wills, unless the intention of the testator would be thereby violated. 7 Monroe's Rep. 625.

Arguments and persuasions used by a testator's children to induce a devise to brother's or sister's children who are poor, is an influence worthily exerted, free from selfishness, and should not condemn a will. 1 Monroe's Rep. 352.

A testator may be aided by the views of others in coming to a just conclusion as to the manner of disposing of his property by will, and the influence thereby exercised, unless it be an in-



terested influence, cannot be deemed an undue influence. *Ib.* 353.

The testator, in his will, says: "Whereas, my will is lengthy, and it is possible I may have committed some error or errors, I therefore authorize and empower, as fully as I could do myself, if living, a majority of my acting executors, my wife, to have a voice as executrix, to decide in all cases, in case of any dispute or contention; whatever they determine is my intention, shall be final and conclusive, without any resort to a court of justice." Clauses of this description have always received such judicial construction as would comport with the reasonable intention of the testator. 1 Peters, 681.

If an unreasonable use be made of such a power so given in a will, one not foreseen, and which could not have been intended by the testator, it has been considered as a case in which the general power of courts of justice to decide on the rights of parties ought to be exercised. *Ib.* 680.

There cannot be such a construction given to such a clause in a testator's will, as will prevent a party who conceives himself injured by the construction, from submitting his case to a court of justice. A court must decide whether the construction of the will, adopted by those who are named, is the right construction, or the grossest injustice might be done. *Ib.*

The intent of the testator is the cardinal rule in the construction of wills; and if that intent can be clearly perceived, and is not contrary to some positive rule of law, it must prevail; although, in giving effect to it, some words should be rejected, or so restrained in their application, as to change their literal meaning in the particular instance. 3 Peters, 346.

In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view. The ties which connect the testator with his legatees, the affection subsisting between them, the motives which may reasonably be supposed to operate with him, and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words, and ascertaining the meaning in which the testator used them. 9 Peters, 68.

It is stated in many cases, that where there are two interests, inconsistent with each other, that which is primary will control that which is secondary. *Ib.*

The language of wills is not of universal interpretation, having the same import in all countries, and under all circumstances. They are supposed to speak the sense of the testator, according to the received laws and usages of the country where he is domiciled, by a sort of tacit reference to them, unless there is something in the language which repels or controls such a conclusion. In regard to personalty in an especial manner, the law of the place of the testator's domicile governs the distribu-

tion thereof, unless it is manifest that the testator had the laws of some other country in mind. 9 Peters. 483.

No one can doubt if a testator, born and domiciled in England during his life, by his will give his personal estate to his heir at law, that the *descriptio personæ* would have reference to and be governed by the import of the terms, in the sense of the laws of England. The import of them might be very different if the testator were born and domiciled in France, Louisiana, Pennsylvania, or Massachusetts. *Ib.*

In construing a will, the court must first look at the particular clause in question, at the same time taking into view the whole instrument, endeavoring to give meaning and effect to every clause of it. Baldwin's C. C. R. 459.

Kent says: "That from Cheney's case (5 Co. 68,) down to this day, it has been a well settled rule, that parol evidence cannot be admitted to supply or contradict, enlarge or vary, the words of the will, nor to explain the intention of the testator, except in two specified cases: 1, where there is a latent ambiguity arising *dehors* the will as to the person or subject meant to be described; 2, and to rebut a resulting trust. It was held in 4 Dess. 215, (S. C.) that even the person who drew the will, could not be admitted to support a mistake in the will."

That a testator was irrational upon some subjects, is not conclusive of his incapacity to make a will, if as to the disposition of his property he manifests rationality. 7 Monroe's R. 198.

Instructions given on the trial of an issue as to the competency or incompetency of the testator to make a will, should not restrict the jury to inquiries involving memory alone, and not reason and knowledge of the natural obligation of relatives. 7 Monroe's R. 657.

In such cases it is not proper to group a set of facts together and say that their existence or non-existence is conclusive of capacity or incapacity. The jury should be left to weigh all the facts proved which bear upon the question of capacity. *Ib.* 658.

To qualify one to make a will, it is not indispensable that such a one should have sufficient capacity to traffic with and manage property advantageously. *Ib.* 658.

The question is not so much what was the degree of memory possessed by the testator, as: Had he a *disposing* memory? Was he capable of recollecting the property he was about to bequeath—the manner of distributing it, and the objects of his bounty? 4 Wash. C. C. Rep. 262.

The only point of time to be looked at by the jury, at which the capacity of the testator is to be tested, is *that* when the will was executed. *Ib.*

The testator must, in the language of the law, be possessed of a sound and disposing mind and memory. He must have a

memory. A man in whom this faculty is totally extinguished, cannot be said to possess understanding to any degree whatever or for any purpose. But his memory may be very imperfect, it may be greatly impaired by age or disease. He may not be able, at all times, to recollect the names, the persons, or the families of those with whom he is intimately acquainted—may at times ask idle questions, and repeat those he had before asked; and yet his understanding may be sufficiently sound for the ordinary transactions of life. He may not have strength of memory and vigor of intellect, to make and digest all the parts of a contract and yet be competent to direct the distribution of his property by will. This is a subject which he may possibly have often thought of; and there is probably no person who has not arranged such a disposition in his mind, before he committed it to writing. 4 Wash. C. C. Rep. 262.

When a paper was headed, "My last will and testament," &c., and the writing was blotted and blurred, interlineations crowded in, whole sentences obliterated, and entire passages cut off, crossed out and repeated, with material variations; and it appeared that the decedent had begun anew on a fresh leaf, an entirely new draught, varying from the preceding in essential particulars, and this was left unfinished, it was held that the paper did not contain sufficient intrinsic evidence of a testamentary intention. 3 Rawle, 15.

A man may be capable of making a will and yet incapable of making a contract, or to manage his estate. The question is, as to the competency when the will was made, though evidence of acts and sayings of the testator before that time will be admitted. 3 Wash. C. C. Rep. 580.

The declarations of the testator, before and at the time of making a will and afterwards, if so near as to be a part of the *res gestæ*, are admissible to show fraud in obtaining the will; but not declarations at any distance of time after the will has been executed, especially when the will has always been in the testator's possession. 1 Gallis C. C. R. 170.

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## LAW OF GENERAL PARTNERSHIP.

Partnership is a contract by which two or more persons agree to bring together certain articles of property, or valuable acts of service, uniting the proceeds in a common fund, divisible according to some particular rate among the partners. One may bring money, another may bring his industry, a third may bring professional talent, and a fourth, perhaps, his mere name and influence in society, as their respective contributions to the common

stock; the pecuniary results of which may be distributed among these partners in proportions of corresponding variety.

Articles of partnership, under seal, are in most cases, executed at the time when the partnership is formed. These articles may commence with the following form: "*This agreement of co-partnership, made and entered into this first day of January, A. D., 1859, by and between A. B. of B., and C. D., of B., witnesseth:*"—Then might follow the nature of the business; the style of the firm; the place of business; the commencement and duration of the partnership; the capital each is to bring into the trade; the proportion in which the profits and losses are to be divided; the manner in which the business is to be conducted; the amount of money which each may draw out for his individual use; the requirements of each partner in relation to the business; the hiring and dismissal of clerks; the signing of securities for money; the entering of one partner into any contract above a certain amount; the keeping of account books; the times of taking trial balance, &c.; the annual accounts, how to be taken and valuation made; mode of dissolution and settlement; the settlement of disputes by arbitration or otherwise, &c., &c. [See Form of Partnership in Business Man's Assistant, page 33.]

The property which each individual brings into the concern becomes the property of the company, and ceases to be that of the individual. An individual partner may buy or borrow from the firm, and the firm may do so from him. Any advantages that may happen to be acquired by individual partners are generally adjudged to be held by them in trust for the company. The partnership has a claim upon the time and attention of each partner, either in terms of the agreement, or in accordance with the circumstances, where there is no special provision.

Persons intending to agree for a share of the profits as the remuneration of labor, generally involve themselves in the liability of a partner. If a person agree to pay another for his labor in a concern, a given sum, in proportion to a given quantum of the profits, it has been considered to be settled that this does not constitute a partnership as to third persons, but that it does constitute a partnership if he has a specific interest in the profits themselves, as profits. An agreement that a broker shall have for his profit whatever he can obtain upon the sales above a certain sum, does not constitute partnership; but one coal-dealer having agreed with another to bring customers to the concern, receiving in return an annuity and 2s. for every chaldron sold, was held a partner, she having allowed her name to be used. H. Blackst. 242. If the company be accommodated with money, the interest or return for which rises and falls with the profit, it will undoubtedly make the lender a partner. In short, it may be safely taken as a rule, that where any one has

an interest in a concern, the extent of which is solely measured by the result of the transactions of that concern, he is liable to the world as a partner.

Each partner is liable, to the full extent of all he possesses, for the general obligations of the company, and each is its accredited representative, entitled, like an agent, to bind it to all suitable obligations.

Negotiable instruments are presumed to be in the way of business of every description of commercial partnership, and so each partner is entitled to draw, accept and indorse bills and notes for the company. If a bill be drawn on the partnership, by its usual collective name, and be simply accepted by one member signing his own name, he will bind the whole. But it is essential to this species of obligation, as to others, that it have the appearance of being contracted for the behoof of the firm, and in the course of its legitimate business. In partnerships purely commercial, the presumption will always be in its favor; but it is otherwise in farming and mining speculations; the presumption here is *against* the negotiable instrument being in the usual course of the business of the firm, but it may still be *proved* to be so.

When all the partners agree, the company may at any time be dissolved, notwithstanding any previous stipulation to the contrary. A partnership at will, or without any specified limit, may be dissolved at the pleasure of any one partner. But a partner is not entitled suddenly to dissolve the connexion for the purpose of taking his colleagues by surprise, and immediately pursuing the partnership business for his own advantage.

Where a partner attempts such a project, he will have to communicate the advantage to his colleagues, as where one partner obtained a renewal of the lease of the company's premises, without warning the others of his intention to apply for it. 17 Vesey, 298. The death of a partner operates as a dissolution, unless it be stipulated that his representatives are to succeed to him, in which case the obligation is a right in which they represent their predecessor.

In case of bankruptcy, the joint estate is first applied to the payment of the partnership creditors, the surplus only going to the creditors of the separate estates.

### *Who are Partners.*

Partners are either ostensible, dormant or nominal. An actual ostensible partner not only participates in the profits and contributes to the losses, but appears and exhibits himself to the world in connection with the partnership as a component member thereof; and is answerable for the debts and engagements of the partnership. 6 Serg. & Rawle, 259; 16 Johns. 40.

A dormant partner participates in the profits of the trade. His name is suppressed and his interest is not therefore apparent. He is, however, liable as a partner. 16 Johns. 40.

A nominal partner has not any actual interest in the partnership, so far as the trade or its profits are concerned. He merely permits his name to be used in the concern. Yet he is liable as a partner. 6 Serg. & R. 338.

If one person advance funds, and another furnish his personal services, or skill, it is a partnership. 16 Johns. 34.

Surviving partners and the representatives of deceased partners are not partners, but tenants in common. 2 Vesey, 297.

To constitute a partnership, the parties must not only be concerned jointly in the purchase, but also in the future sales, profits, and losses. 3 Kent, 25.

If several persons, who had never met and contracted together as partners, agree to purchase goods in the name of one of them only, and to take *aliquot* shares of the purchase, and employ a common agent for the purpose, they do not, by that act, become partners or answerable to the seller in that character, provided they are not jointly concerned in the resale of their shares, and have not permitted the agent to hold them out as jointly answerable with himself. 9 Johns. 470.

Allowing a clerk, or agent, a portion of the profits of sales as a compensation for labor, does not render him a partner. 3 K. 33.

The existence of a partnership cannot be proved by reputation. 5 Blackf. 248.

### *Liabilities of Partners.*

Each individual member of a firm is answerable for the whole amount of the debts of the concern, without reference to the proportion of his interest, or to the nature of the stipulation between him and his associates. 3 Kent, 32.

If one party borrowed money in his individual name, a dormant partner is equally liable, if the borrower represented it to be for the use of the partnership, though without such representation, the creditor must prove that the money went to the partnership use. 9 Pick. 272.

Nor can a partner exonerate himself from personal responsibility for the existing engagements of the company, by assigning or selling out his interest in the concern. 2 Carr. & P. 401.

When a person joins a partnership, he does not, without a special promise, assume the previous debts of the firm, nor is he bound by them. 4 Taunt. Rep. 582.

If, however, goods are purchased in pursuance of a previous engagement between two or more persons, that one of them should purchase the goods on joint account, in a foreign adventure, they are all answerable to the seller for the price, as part-

ners, even though their names were not announced to the seller. 12 East, 421.

Partners are joint tenants of their stock in trade, without the right of survivorship. But no partner has an exclusive right to any part of the joint stock, until a balance of accounts is struck, and the amount of his interest is ascertained; and his interest is his share in the surplus, according to the partnership agreement, after the firm accounts are settled, and all just claims satisfied. 6 Mass. Rep. 242.

The act of one partner is the act of all. His act, though on his private account, and contrary to the private arrangement among themselves, will bind all the parties, if made without knowledge in the other party of the arrangement, and in a matter, which, according to the usual course of dealing, has reference to business transacted by the firm. 3 Kent, 40.

In all contracts concerning negotiable paper, the act of one partner, unless done without the appearance of being a partnership transaction, binds the firm. 1 Camp. N. P. 384.

If from the subject matter of the contract, or the course of dealing of the partnership, the creditor was chargeable with constructive knowledge that the transaction was on the private account of the partner, the partnership is not liable. 5 Conn. 574.

Each partner, in ordinary cases, and in the absence of fraud on the part of the purchaser, has the complete disposition of the whole partnership interests, and is considered to be the authorized agent of the firm. 12 Mass. 54.

The weight of authority is in favor of the power of a majority of the firm, acting in good faith, to bind a minority in the ordinary transactions of the partnership, when all have been consulted. 3 Kent, 45.

A partner may pledge the partnership effects, in a case free from collusion, if done in the usual mode of dealing, and it has no relation to the trade in which the partners are engaged, and when the pawnee had no knowledge that the property belonged to the firm. *Ibid.*

A partner cannot bind his co-partner by a guaranty, or letter of credit, without special or implied authority, unless the guaranty be afterwards adopted by the firm. 2 Penn. Rep. 177. Nor can one partner bind the firm by deed, unless specially authorized so to do by an instrument under seal. 7 Tenn. R. 207. An absent partner, however, may be bound by a deed provided there be a previous parol authority, subsequent to the adoption of the act. 11 Pick. 405. Nor can one partner bind the firm by a submission to arbitration. 1 Peters U. S. R. 221.

If one of two partners, in the presence of the other and with his consent, subscribe the names of both to a note and put a seal to it, it is the deed of both. 6 Blackf. 26.

If a creditor of one of several partners take a bill or note from

his debtor in the name of the firm for his debt, without the knowledge of the other partners, he cannot sue the firm on such bill or note. 6 Blackf. 387.

The defendant's acknowledgment of the partnership of the plaintiffs, is sufficient evidence of such partnership. *Ibid.* 479.

If goods be purchased by a partner for the use of the firm, the seller may sue the partners for the price, though he did not know, at the time of the sale, of the existence of the firm. *Ib.*

The doctrine, that the separate debt of one partner should not be paid out of the partnership estate, until all the debts of the firm are discharged, is correct; but it does not apply until the partners cease to have a legal right to dispose of their property as they please. It is applicable only, when the principles of equity are brought to interfere in the distribution of the partnership property among the creditors. 2 Blackf. 55.

Those equitable principles operate on the property remaining in the possession of the partners, and embrace all that has been fraudulently disposed of; but they do not extend to such as has been previously transferred by the firm in good faith. *Ibid.*

Although one partner cannot bind his co-partner by deed, yet a deed executed by one for himself and partner, in the other's presence and by his authority, is the deed of both. *Ibid.* 119.

Payment of a debt to one partner of a firm is good against the other partners; and a release by one partner to a debtor of the firm is obligatory on the others. *Ibid.* 371.

### *Dissolution of Partnership.*

If a partnership be formed for a single purpose, or for a definite period, it expires when that purpose is accomplished, or that period elapses. 16 Johns. 491.

A partnership may be dissolved by the voluntary act of the parties, by the death, insanity, or bankruptcy of either, and by judicial-decree, or by such a change in the condition of one of the parties as disables him from performing his part of the duty, and by operation of law, as by war between the governments to which the partners respectively belong. *Ibid.*

In a partnership without any definite period, either partner may withdraw at pleasure, if he act in good faith in so doing. 16 Vesey, 49. So the marriage of a *feme sole* dissolves a partnership of which she is a member. 4 Russ. 260.

In case of the death of one partner, his representatives have a right to have the partnership effects applied to the payment of the firm debts, and may enforce this right by injunction, &c. 3 Kent, 57.

When the business for which a partnership was created is found to be impracticable, and the property invested liable to be wasted and lost, the scheme visionary and founded upon erroneous principles, in case of gross abuse of good faith between the



parties, a dissolution will be decreed, but only in strong cases. So, in some instances, the court will interfere to stay waste and to enjoin one partner from gross abuse of the rights of the others. 3 Kent, 601.

The power of one partner to bind the firm ceases, immediately on its dissolution. Either of the former partners can receive payment of debts due to the firm and give a release. 19 J's. 143.

On the dissolution by death, the surviving partner settles the affairs of the concern ordinarily. 3 Kent, 63.

The survivor must account with the representatives of the deceased partner; and if he will not come to any settlement with them, equity will restrain him from disposing of the joint stock and receiving the outstanding debts, and the representatives' right in the interest of the deceased partner is to be ascertained by sale and not by calculation. 15 Ves. 226.

Each party may insist on a sale of the joint stock; and when a court winds up the concern, it is done by a sale of the property, and a conversion of it into money. And when the partner in possession of the capital continues the trade with the joint property, he will be bound to account. 7 Conn. R. 11.

Partnership effects cannot be taken by attachment, or sold on execution, to satisfy a creditor of one of the partners only, except it be to the extent of the interest of such partner in the effects, after the settlement of all accounts. 16 Johns. 102.

Due notice of the dissolution must be given, and a firm may be bound, after the dissolution of a partnership, by a contract by one partner in the usual course of business, in the name of the firm, with a person who contracted on the faith of the partnership, and had no notice of the dissolution. 4 Paige, 17.

The weight of authority seems now to be, that notice in one of the usual advertising gazettes of the place where the business was carried on, and published in a fair and usual manner, is not presumptive evidence, merely, but conclusive, as to all persons who have not been previous dealers with the firm. But as to persons who have previously been in the habit of dealing with the firm, it is requisite that actual [*special*] notice be brought home to the creditor. 3 Kent, 67.

No person carrying on business shall assume or continue the name or names of any person or persons, formerly connected with him in partnership, or of any other person, either alone or in connexion with his own or any other name, without the consent in writing from such person or his legal representative. *Laws of Mass.*, 1853.

When a dissolution has taken place, one partner is not to be bound by instruments negotiated by the other in the name of the original firm, after such dissolution, notwithstanding they are negotiated by the partner authorized to settle the partnership business. 1 Carter's Ind. Rep. 185.

## LAW OF LIMITED PARTNERSHIP.

Laws permitting Limited, or Special Partnerships, exist in most of the States. Such associations consist of one or more persons, who are liable to the whole extent of their property, and are called general partners; and of one or more persons, as *special* partners, who shall contribute a *specific* sum in *actual cash payment*, as capital to the common stock. And such *special* partner is not liable for the debts of the partnership, beyond the sum contributed by him to the capital. In all limited partnerships, the business of the partnership must be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word company, or any other general term; nor can the name of any special partner be used in such firm, with his consent or privity, nor can he in any way interfere in the business transactions or legal proceedings, without being deemed and treated as a general partner. But he may advise as to its management, and examine the state of its accounts. The parties are required to sign a certificate, which must be published for a certain number of weeks, in one or more newspapers, and acknowledged and recorded. The capital stock must not, during the partnership, be reduced below the amount stated in the certificate. If a false statement shall be made in the certificate, all the persons interested in the partnership are liable as general partners.

*Certificate of Special Copartnership.*

This is to certify that A. B., C. D., and E. F., of —, in the county of —, and G. H., of —, in the county of —, have formed a limited copartnership, for the purpose of carrying on a — business in —, in the county of —, under the style and firm of B. & D. Said copartnership to continue for the term of — years, commencing on — and terminating on —. The said A. B. and C. D. are the general partners, and E. F. and G. H. are the special partners, and have each contributed the sum of ten thousand dollars, in cash, making an aggregate of twenty thousand dollars toward the capital of said copartnership.

In witness whereof we, the said A. B., C. D., E. F., and G. H., have severally hereunto set our hands this — day of —, 185—.

A. B.  
C. D.  
E. F.  
G. H.

In presence of

I. R. B.

\* S—, ss. B—, —, 185—. Then personally appeared the above (or within) named A. B., C. D., E. F. and G. H., known to me to be the individuals described in and who executed this certificate, and severally acknowledged the same to be their voluntary act and deed, and to be in all particulars correct.

I. R. B., *Just. of the Peace.*

*Articles of Special Copartnership.*

WE, A. B., C. D., and E. F., all of —, in the county of —, and state of —, hereby agree to associate ourselves in a limited copart-

nership according to the provisions of the Statutes, chapter —, for the purpose of carrying on the business of dealing in [*here state the business*] &c. ; in said town [or city] of —; and have formed the following articles of agreement; for the faithful performance of which we hereby mutually bind and engage ourselves, each to the others, and his and their executors and administrators :—

*First.* The style of the said copartnership shall be B. & D., and shall continue for the space of — years from the — day of —, in the year eighteen hundred and fifty —.

*Second.* The said B. & D. are the general partners, and the said F. is the special partner, and has contributed the sum of thirty thousand dollars *in cash*, towards the common stock of the said copartnership.

*Third.* All profits which may accrue to the said copartnership shall be divided in the proportion of one-third to each, up to the — day of —, in the year eighteen hundred and fifty —; and after that time, in the proportion of one quarter to the said F., and three-eighths to the said B., and three-eighths to the said D. And all losses happening to the said firm, whether from bad debts, depreciation of goods, or any other cause or accident, and all expenses of the business, shall be deducted before the profits are divided.

*Fourth.* Each partner shall be credited with interest upon the capital stock contributed by him, before the profits of each year are divided; and the said F. may draw out the interest upon the capital stock contributed by him, monthly, under the liabilities of section —, chapter — of the Statutes.

*Fifth.* The said B. & D. shall each be allowed — dollars per annum for their services, and shall devote their time and attention to the business; said compensation to be paid monthly, and charged to expense account.

*Sixth.* Neither of the parties shall draw out more than the amounts above stated, of the current profits, during the partnership, unless by unanimous consent.

*Seventh.* All the purchases, sales, transactions, and accounts of the said firm shall be kept in regular books, which shall always be open to the inspection of all the said parties and their legal representatives, respectively. An account of stock shall be taken, and an account between the said parties shall be settled, as often as once in every year.

*Eighth.* Neither of the said parties shall subscribe any bond, sign or endorse any note of hand, accept, sign, or endorse any draft or bill of exchange, or assume any other liability, verbal or written, in the name of the said firm, for the accommodation of any other person or persons, whatever, without the consent in writing of both the other parties; nor shall either party lend any of the funds of the copartnership, if objection be made by either of the partners.

*Ninth.* At the expiration of the term, or sooner previous dissolution, of this copartnership, a just and equitable account of profits shall be made up, and (after settlements of debts due from the copartnership, and the claims of each partner for capital contributed, and interest) shall be distributed to the partners in the proportions stated in *article third* of this agreement. But the said F. shall not draw out his capital stock or profits, after the expiration of said copartnership, faster than at the rate of — dollars per month, without consent of the said B. & D.; it being understood that whatever balance may be due him shall draw interest.

*Tenth.* For the purpose of securing the performance of the foregoing Agreements, it is agreed that either party, in case of any violation of them, or either of them, by the others, or either of them, shall have the

right to dissolve this copartnership forthwith, on his becoming informed of such violation.

In witness whereof we, the said A. B., C. D., and E. F., have hereunto set our hands this — day of —, in the year eighteen hundred and fifty —.

Witness,  
G. H.

A. B.  
C. D.  
E. F.

### *Another Form of Special Copartnership.*

THIS INDENTURE, made this — day of —, A. D. —, by and between A. B.; of —, in the county of —, and state of —, and C. D., of —, in the county of —, and state aforesaid. Witnesseth:

1. That the said parties covenant and agree to and with the other, as follows:—

2. That a limited partnership for the purpose of prosecuting the business of —, shall be, and is this day entered into by said parties, in which said A. B. shall be the general, and said C. D. the special partner, to continue until the — day of —, A. D. —, upon the terms, provisions, and conditions herein contained.

3. That said D. shall furnish a capital of — dollars *in cash*, and shall at his own expense procure the services of a competent person, satisfactory to said B. as book keeper.

4. That said B. shall also furnish a capital of — dollars in cash or in stock at a fair cash valuation, and shall give his personal and undivided attention to the business of the copartnership.

5. That said business shall be carried on for the common benefit and at the common risk and expense of the parties, excepting that said D. shall in no case be or become liable beyond the amount of — dollars, to be by him furnished.

6. That the net profit of the business shall be shared equally, and his share passed to the credit of each party, on his individual account, in the books of the copartnership, when the amount thereof shall be ascertained upon the yearly settlement. That an allowance of — per cent. interest shall be made upon all such amounts of profits not withdrawn, and advances made by either party to the copartnership.

7. That said B. shall be at liberty to draw out the sum of — dollars, and no more, in each year.

8. That an account of the copartnership property and effects of whatever nature shall be made in the month of — in each year; or if then omitted, at the earliest convenient season thereafter, at the request of either party, and an estimate shall then be made of the result of the business of the preceding year.

9. That said D. shall at all times have access to the books, accounts, and papers of the copartnership personally, or by his agent or attorney; that he or they may take or cause to be taken copies or abstracts thereof at any and all convenient times; that a just and true statement of the affairs of the copartnership shall, so far as practicable, be furnished to him at his request at any and all convenient and reasonable times; and that all important information respecting the affairs of the copartnership shall be imparted to him promptly and without reserve.

10. That whenever the outstanding liabilities of the copartnership shall amount to the sum of — dollars more than there are available means to meet, no further liabilities shall be incurred, excepting to fill orders, without the written consent of said D.

11. That said B. shall not give or endorse any notes, or accept any bills or orders, beyond the amount of — dollars outstanding at any one time

without the consent of said D., except for value actually received to the use of the copartnership, and in the usual course of dealing; nor directly or indirectly render the copartnership liable in any matter or thing not concerning their business, nor give credit for any merchandise to any person whom he has been advised by said D. not to trust.

12. That upon the termination of this copartnership by lapse of time an account of the stock, property, assets, and liabilities of the copartnership shall be taken, and the value of the claim, share, and property of each party therein shall be estimated and it shall be optional with said B. to give said D. three notes upon nine, eighteen, and twenty-one months, for the amount of said D.'s share of the property and claims upon said copartnership, with interest, with good security, and continue the business on his sole account and for his own benefit and use.

13. That in case any question shall arise between the parties the same shall be referred to three persons, to be agreed upon by the parties, whose decision shall be conclusive, and in case of any alleged breach of the terms hereof, reference shall be made as aforesaid upon notice by the aggrieved party; and the referees shall decide whether there has been such breach, and whether the same be good cause for the dissolution of the copartnership; and if so, then the copartnership hereby established, shall be determined; and the aggrieved party shall be at liberty to advertise and record a dissolution thereof, and shall have a lien upon all the stock and effects to secure the capital by him contributed, and the debt that may be due to him from the copartnership.

In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

*In presence of*

A. B. [L. S.]  
C. D. [L. S.]

## PRINCIPAL AND AGENT.

An agent may be constituted by direct writing, or his authority may be implied from his situation.

Commercial agents receive the most ample and important powers by simple letter, which may either be general, authorizing them to conduct a particular line of business, and to perform the train of transactions connected with it; or specific, and applicable only to some named transaction; as, where a merchant employs a commission-agent to sell or purchase a particular lot of goods. Implied agency arises from the position of the parties; a slight circumstance will resolve the contract of master and servant into that of principal and agent, in as far as respects third parties. If the master have allowed his servant to buy for him on credit, he is answerable for what the servant may buy, though without his authority, if it be in the line of transactions which the servant was permitted to enter on, and if the dealer was not warned of the want of authority in the particular case. Other limited authorities may likewise be extended by implication. "Thus, a broker employed to purchase, has no authority, as broker merely, to sell for his principal. But if the principal has allowed him to clothe himself with the

apparent ownership, or has given him the power of disposition, he cannot afterwards reclaim the goods from a third person, to whom the broker has made an unauthorized sale of them." Pa-ley, 167.

An agent cannot depute his duty to another, unless specially empowered to do so. Written instructions receive a strict interpretation, but they are viewed through the medium of the usages of trade and the necessity of the case.

The first duty of an agent is to follow his instructions, and where he has received none, this duty resolves itself into an adherence to the proper practices of trade in the capacity in which he is employed. Every breach of his authority is at the agent's own peril, though done with the intention of benefiting his principal. If it be unsuccessful, he is responsible; if it be successful, the advantage is reaped by his employer. The usual definition of what is expected of him is, that he shall treat his employer's affairs as if they were his own, and do corresponding justice to them according to their importance. It would not, however, relieve an agent from the consequences of neglecting the affairs of his principal, to prove that he had been equally careless of his own; the diligence required of him is that which a prudent man takes in his own affairs.

By permitting another to hold himself out to the world as his agent, the principal adopts his acts, and will be held bound to the person who gives credit thereafter to the other in the capacity of his agent. Where a person sent his servant to a shop-keeper for goods upon credit, and paid for them afterwards, and sent the same servant again to the same place for goods, with money to pay for them, and the servant received the goods and embezzled the cash, the master was held answerable for the goods, for he had given credit to his servant by adopting his former act. 2 Kent, 614.

### *Relative Rights, &c., of Principal and Agent.*

The acts of a general agent, or one whom a man puts in his place to transact all his business of a particular kind, will bind his principal, so long as he keeps within the general scope of his authority, though he may act contrary to his private instructions. But an agent, constituted for a particular purpose, and under a limited power, cannot bind his principal if he exceed his power. 15 Johns. R. 44. The special authority must be strictly pursued. Whoever deals with a special agent, deals at his peril, when the agent passes the precise limits of his power. If A. authorize B. to buy an estate for him, at 50 dollars per acre, and he give 51 dollars an acre, A. is not bound to pay that price; but the better opinion is, that if B. offer to pay the excess out of his own pocket, A. is then bound to take the estate. 5 Yerger's Tenn. R. 71.

The agent becomes personally liable only where the principal is not known, or where there is no responsible principal, or where the agent becomes liable by an undertaking in his own name, or where he exceeds his power. 11 Mass. 29. But if a person would excuse himself from responsibility on the ground of agency, he must show that he disclosed his principal at the time of making the contract. And if the agent buy in his own name, but for the benefit of his principal, and without disclosing his name, the principal is also bound, as well as the agent, provided the goods come to his use, or the agent acted in the business entrusted to him according to his power, 12 Wend. 413.

If the agent bind himself personally, and engage expressly in his own name, he will be held responsible, though he should in the contract give himself the description or character of agent. 13 Johns. 307.

If an agent, on behalf of government, make a contract, and describe himself as such, he is not personally bound. 1 Greenl. R. 231.

An agent, without authority from the principal, cannot appoint a sub-agent to do the business. 2 Kent, 633.

By the custom of trade, an agent may have a lien upon the property of his employer in his possession, for a general balance of accounts, as well as for expenses incurred in taking care of the property. *Ibid.*

The principal is bound to reimburse the agent all expenses he may have lawfully incurred about the agency; to pay him his commission agreed upon, or according to the usage of trade; and to indemnify him for damages sustained by reason of the principal's conduct. Story's Ag. sec. 335.

If credit be given to an agent of government, and not to the government, the agent himself will be liable. 2 N. H. R. 352.

A reasonable time for sale, in the due course of business, must elapse before a factor can demand reimbursement of his advances, and make a sale of goods consigned to him below the sum to which he is limited, if they have not been paid, or sustain a suit to recover them. 12 N. H. Rep. 239.

Where goods are consigned to a commission merchant, or factor, for sale at a certain limited price, and he makes advances on them, if the goods cannot be sold at the price limited, and the consignor, upon reasonable notice, neglect to repay the advances, the factor may sell the goods at the fair market value, although below the limit, and recover the balance of the advances, if any remain. *Ibid.*

A factor cannot sell the property of his principal to a firm of which he is a member. 8 N. H. Rep. 504.

A ratification of part of an unauthorized transaction of an agent, or one who assumes to act as such, is a confirmation of the whole. 1 Comst. N. Y. Rep. 433.

An action does not lie against an agent or factor for not accounting, until after a demand to account. 3 Blackf. Ind. R. 324.

An agent is not liable to a suit for money collected for his principal, unless it have been previously demanded. *Ibid.* 251.

The statute of limitations in such action does not begin to run until a demand has been made. *Ibid.* 324.

The declarations of an agent, at the time of making a contract for his principal, may be proved to show the character in which the contract was made, but they are not evidence to prove the agency; nor are the agent's declarations, made subsequently to the contract, admissible as evidence for any purpose. *Ibid.* 436.

In an action against the principal for the price of goods bought for him by an agent, the delivery of the goods to the agent may be proved, without calling him as a witness, or accounting for his absence. *Ibid.* 436.

An agent who has only authority to receive payment of a debt, cannot bind his principal by any arrangement short of an actual collection of the money. 2 Carter's Ind. Rep. 322.

An agent employed to sell, cannot make himself the purchaser. 13 Ves. 103. And if he be employed to purchase, he cannot be the seller. 2 Camp. 203.

An agent is bound to use, in the execution of his trust, the utmost diligence and care. 2 Wills. 325.

An agent is not liable in cases of robbery, fire, or any other accidental damage happening without his default. 2 Mod. 100.

A loss, occasioned by an unauthorized disposal or adventure of the principal's money, and not prescribed by the usage of business, though intended for his benefit, is chargeable to the agent. 1 Kinnie, Com. 42.

The principal will be held implicated to the fullest extent, in what his agent does, within the scope of what he expected him to do, or for that which he knew he had done, if he persist in taking the benefit of the act. 21 Vermont R. 129.

Where it distinctly appears in the body of a parol agreement, signed by an agent in his own name, without the addition of the name of the principal, that the principal is the contracting party, the agreement will be construed to be that of the principal, and not of the agent. 1 Dougl. Mich. Rep. 106.

The rule that an attorney or agent, to bind his principal, must sign the name of the principal, applies only to deeds, and not to simple contracts. *Ibid.*

### *How is Agency Terminated?*

An agency may terminate by the death of the agent; limitation of the power to a particular time; execution of the business which the agent was constituted to perform; by a change in the state or condition of the principal; by the principal's express revocation of the power; or principal's death. 2 Kent, 643.



## OFFENCES AGAINST TRADE.

*Usury.*

Where an original contract is usurious, any subsequent contract to carry it into effect, is also usurious. 15 Mass. 96.

Interest calculated and received upon a note upon the principle of 366 days being a year, is usurious. 1 Wend. 555.

Taking interest for a part of a year, computed on the principle that a year consists of three hundred and sixty days, or twelve months of thirty days each, is not usurious, provided the course is adopted *bona fide*, as an easy and practicable one, and not a cover for usury. 12 Pick. 586.

Discounting the interest at the time of taking the loan is not necessarily usury. It is for the jury to decide whether it is done for the purpose of evading the statute. 1 Pick. 295.

A person, through his agent, borrowed of the defendant 550 dollars, payable in one year. The defendant handed the agent 550 dollars, but immediately received the 50 dollars again from the agent as interest. Held, that the contract was usurious. 2 Carter's Ind. Rep. 546.

The penalty for taking excessive usury is not incurred, unless the lender in fact corruptly receive the usurious interest, although he has received security for the payment of the money loaned, with usurious interest. 7 Mass. Rep. 261 ; 10 *Ib.*, 121.

But if, at the time of making the loan, the borrower advance a sum of money exceeding the lawful interest, by way of compensation for forbearance, the offence of usury is from that time committed, and the lender will be liable to the penalty, whether the principal sum be ever paid or not. 5 Mass. R. 53.

Upon a prosecution to recover the penalty for taking excessive usury, it will be no excuse for the defendant that he acted as agent for another person, especially if he professed, at the time, to act on his own account, and not as agent. *Ib.*

An agreement to pay more than legal interest for money lent on note, such agreement being made at the time of the loan, is usurious, though it, on its face, be for the mere amount lent, with legal interest only. 9 Cowen, 65.

Where a partial payment has been made on account of a note for a sum of money borrowed on usurious interest, it was held that the usury was complete. 1 Dall. 216.

A fair purchase may be made of a bond or note, even at 20 or 30 per cent. discount, without incurring the penalties of usury. *Ib.*

*Rates of Interest in different States.*

| STATES.           | RATE OF INTEREST. | FORFEIT FOR USURY.                                                              |
|-------------------|-------------------|---------------------------------------------------------------------------------|
| Maine,            | 6 per cent.       | Forfeit of the usury.                                                           |
| New Hampshire,    | 6 per cent.       | Forfeit of three times the amount of usury.                                     |
| Vermont,          | 6 per cent.       | Forfeit of usury.                                                               |
| Massachusetts,    | 6 per cent.       | Forfeit three times the whole interest paid.                                    |
| Rhode Island,     | 6 per cent.       | Forfeit of usury.                                                               |
| Connecticut,      | 6 per cent.       | Forfeit the usury and interest on the debt.                                     |
| New York,         | 7 per cent.       | Forfeit of the whole debt, or \$1000 fine.                                      |
| New Jersey,       | 6 per cent.       | Forfeit of the whole debt.                                                      |
| Pennsylvania,     | 6 per cent.       | Forfeit of the usury                                                            |
| Delaware,         | 6 per cent.       | Forfeit of the whole debt.                                                      |
| Maryland,         | 6 per cent.       | Forfeit of the usury.                                                           |
| Virginia,         | 6 per cent.       | Contract void, liable for twice the debt.                                       |
| North Carolina,   | 6 per cent.       | Contract void, liable for twice the debt.                                       |
| South Carolina,   | 7 per cent.       | Forfeit of usury and interest, with costs.                                      |
| Georgia,          | 7 per cent.       | Forfeit of usury.                                                               |
| Alabama,          | 8 per cent.       | Forfeit of interest and usury.                                                  |
| Mississippi       | 6 per cent.       | For bona fide loan of money 10; forfeit usury and interest.                     |
| Louisiana,        | 5 per cent.       | Conventional as high as 8; forfeit of interest and usury.                       |
| Tennessee,        | 6 per cent.       | Forfeit the usury.                                                              |
| Kentucky,         | 6 per cent.       | Usurious excess void.                                                           |
| Ohio,             | 6 per cent.       | Usurious excess void.                                                           |
| Indiana,          | 6 per cent.       | Forfeit the interest.                                                           |
| Illinois,         | 6 per cent.       | For money loaned 10 per cent; forfeit the whole interest.                       |
| Missouri,         | 6 per cent.       | By agreement 10 per cent; forfeit the whole interest.                           |
| Michigan,         | 7 per cent.       | On written agreement may go as high as 10; void for the excess over 7 per cent. |
| Arkansas,         | 6 per cent.       | Parties can contract for 10; beyond, contract void.                             |
| Dis. of Columbia, | 6 per cent.       | Usurious contract void.                                                         |
| Florida,          | 6 per cent.       | By agreement 8 per cent; forfeit of the whole interest paid.                    |
| Wisconsin,        | 7 per cent.       | By agreement in writing 12; if more be taken forfeit treble the excess over 12. |
| Iowa,             | 6 per cent.       | Conventional 10; usurious excess void                                           |
| Texas,            | 8 per cent.       | Conventional 12; beyond forfeit of interest and usury.                          |
| California,       | 10 per cent.      | Parties can contract for any interest.                                          |
| Minnesota,        | 7 per cent.       | Parties can contract for any higher rate.                                       |

*Cheating.*

By this is meant any fraudulent practices, by which a person is defrauded of his rights ; as by false weights and measures, the selling of goods with counterfeit marks, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written : all which offences are punishable with fine and imprisonment.

To constitute cheating, a merely *false representation* is not sufficient. That falls under the head of the next-mentioned offence. In cheating there must be a plausible contrivance, as by false weights and measures, against which the ordinary prudence of individuals is no security. So that selling by *false weights* is an indictable offence, though selling *under measure* is ground only for a civil action.

Under the head of cheating may be included *false personation* ; which consists in the offender's falsely representing himself, or assuming to be, any other person, whether such other person be alive or dead, or whether or not such other person ever existed ; the object of the offender being the fraudulent obtaining of another's property.

So it is false personation, to receive the wages, pay, bounty-money, pension, or gratuity, in the army or navy ; or falsely personating the owner of any share or interest in any stock, annuity, or other public fund.

*Obtaining Money or Goods by False Pretences.*

This is another and common species of fraud. In order to constitute a false pretence, there must be a fraudulent representation as to the existence or non-existence of some specific fact, by which, wholly or in part, property is obtained. So where a person obtains goods upon a false representation, as to the value of his property, the goods must have been obtained upon the false representation of the purchaser alone, and not of others, as to the value of the property. If a man purchasing goods, promises to call and pay for them the next day, this is a mere prospective engagement, but no misrepresentation as to any specific fact ; but if he obtain goods, and give in payment, his check upon a bank, where he has no cash, and keeps no account, the crime is complete. In one case, where a party, to induce his banker to honor his checks, drew a bill on a person on whom he had no right to draw, and which had no chance of being paid, in consequence of which the banker paid his checks, it was adjudged not to be a false pretence, because he only obtained *credit* ; it would have been otherwise had he obtained *money* upon the bill.

A minor going about, pretending he is of age, and obtaining money or goods, may be punished as a common cheat.

On an indictment for obtaining by *false pretence* the signature of a party to a note, where the pretence was, that the prisoner had money in the hands of a third person, absent at the time, it was held, that it was not material to prove the amount represented to be the identical sum stated in the indictment ; that it was enough if it was sufficient to meet the payment of the note which the party was induced to sign. 13 Wend. R. 87.

It is competent to a party whose signature has been fraudulently obtained, to state the reasons why he did not confide in the personal responsibility of the accused. Ib.

If the accused attempt to show his ability to pay, the proof must be limited to the time when the signature was obtained. Ib.

A false representation authorizes the inference of an intent to defraud. Ib.

It is not necessary to a conviction, that the false pretences should be the sole inducement to the signing of the note ; if they have a controlling influence in inducing the signature, it is enough, although minor considerations operate on the mind of the party. Ib. And see 11 Wend. 557.

Where a signature to a note has been obtained by false pretences, and the party defrauded has been obliged to pay the note, the indictment may charge the sum paid to have been obtained by false pretences, without setting forth the obtaining of the signature. 13 Wend. 87.

Proof that a party from whom a note has been obtained by false pretences, has been subjected to the payment of the money specified in the note, is inadmissible unless there be a count for obtaining money by false pretences. 13 Wend. 311.

In an indictment under the statute for obtaining by false pretences the signature of a person to a written instrument, it is not necessary to charge loss or prejudice to have been sustained by the prosecutor ; the offence is complete when the signature is obtained by false pretences, with intent to cheat or defraud ; and it is not essential that actual loss or injury should be sustained. 11 Wend. 18.

A writing in the form of a bond, neither having the signature nor purporting to have the signature of any person attached to it, is not a false writing within the meaning of the statute. To constitute it such, it must be some instrument, letter, or other writing false in fact, but purporting to have been signed by some person, and to be his act, and so framed as to have more weight and influence in effecting the fraud of obtaining a signature to a written instrument, or goods, etc., than the mere naked assertion of the party defrauding. 13 Wend. 311.

The statute against obtaining goods by false pretences ex-

tends to every case where a party has obtained money or goods by falsely representing himself to be in a situation in which he is not, or by falsely representing any occurrence that has not happened, and to which representations, persons of ordinary caution may give credit. 11 Wend. 557.

An indictment lies for obtaining goods by false pretences, where a party represents himself to be the owner of property which does not belong to him, and thus fraudulently induces the owner to sell goods to him on credit. The gist of the offence in such case, consists in procuring the goods of another by false pretences, with the intent to cheat and defraud; intentionally and fraudulently inducing the owner to part with his property, by wilful falsehoods, in representing himself to be in a condition in which he knew he was not. 25 Wend. 399; 14, 558; 11, 565.

An indictment charged that the defendant falsely pretended to one A., that B., C. and D. were indebted to him, the defendant, in a certain sum, and that they were bound to pay a certain bill of exchange, then in the defendant's possession and then over due, drawn by the defendants B., C. and D., payable to their order ninety days after date, and accepted by them, and which they indorsed to the defendant who indorsed it to said A.; that by said false pretences, the defendant obtained from said A. certain goods with intent to cheat, &c.; whereas, in fact, the said B. and C. were not then indebted to the defendant, nor were said B., C., and D. bound to pay said bill. Held that the first pretence was not sufficiently negatived, and, as to the second, that there should have been an averment that the defendant knew that B., C. and D. were not bound to pay the bill. An indictment for obtaining goods by false pretences must state to whom the goods belonged. 8 Blackf. I. R. 489.

It is not necessary to prove all the pretences charged; proof of part, and that the money was obtained by such part, is sufficient. Russ. & R. C. C. 190.

As to the time when the false representations are made, it has been decided in a late case by the court of errors, that if the false pretences are not made until after the goods are actually delivered, and the sale is complete, the person cannot be convicted of obtaining the goods by false pretences. 14 Wend. 546.

An indictment will not lie for obtaining money by false pretences, where the money is parted with as a charitable donation, although the pretences moving to the gift are false and fraudulent. 17 Ib. 351.

It is not necessary that the false pretence should be in words. Thus, if a person obtain goods from another, and give in payment, a check upon a banker with whom he has no cash and keeps no account, it is a false pretence within the meaning of

the act. 3 Camp. Rep. 370; 7 Car. and P. 825, 784; 14 Wend. 559.

But the pretence must be of some existing fact, made for the purpose of inducing the prosecutor to part with his property. Therefore, a pretence that the party would do an act he did not mean to do, as a pretence to pay for goods on delivering, is not a false pretence within the act, but merely a promise for future conduct. (Russ. and Ry. C. C. 461.) The pretence must be for the purpose only of obtaining the property. Therefore, a pretence to a parish officer, as an excuse for not working, that the party has not clothes, when he really has, though it induce the officer to give him clothes, is not a false pretence within the statute; the statement being rather a false excuse for not working, than a false pretence to obtain goods. (*Ibid.* 604.) If a person procuring a tradesman to sell him goods as for ready money, direct him to send them to his lodgings, and then deliver fabricated bills in payment, retaining the goods, he may be convicted of having obtained them by false pretences. 2 Leach, 614.

If any person shall, by means of any false pretence, relating to his means or ability to pay (when by the terms of such purchase, payment for the same is not to be made upon, or before, delivery, of the property so obtained,) obtain goods, wares, merchandise, or other property, he shall be punished by imprisonment in the State prison not more than ten years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than two years. *But such pretence shall be made in writing, and signed by the party to be charged.* Mass. Law, 1854, c. 12, and R. S. c. 126.

Justices of the peace and police courts shall have jurisdiction of the offence of false pretence, in all cases in which they would have had jurisdiction of a larceny of the same property, and shall impose a like punishment. *Law of 1857.*

### *Fraud.*

Fraud may consist either in the suppression of the truth, or in the misrepresentation of a fact, and vitiates all contracts from the commencement. 3 Chit. Com. Law, 155.

It is a general rule that when a party is not able to protect himself, the courts will interfere. They will, hence, set aside all contracts made by a party while under imprisonment; and, in some instances of extreme necessity and distress, even where there is no duress, if his free agency is entirely overcome by some oppression, fraudulent advantage or imposition. 1 Story on Eq. Jur. 244.

When money or goods are obtained by fraud, the lender or seller may treat the loan or sale as a nullity. He may even

claim them in the hands of the sheriff, but not in those of a *bona fide* purchaser. 15 Mass. 75, 156.

Where one party, who is under some special obligation, by confidence reposed or otherwise, fails to communicate facts in his possession, of which the other is ignorant, the presumption of fraud will attach. Story, Eq. Jur. 217.

If one party suffer another to buy an article under a delusion created by his own conduct, it will be deemed fraudulent. 2 Kent, 482.

The seller is bound to disclose latent defects; but those open equally to observation of both parties, he need not. *Ib.*

Where the relation of principal and agent, client and attorney, principal and surety, guardian and ward, trustee and *cestui que trust*, partners and part owners, exists, the law requires the utmost degree of good faith in transactions between them. And any misrepresentation or concealment of any material fact, or just suspicion of artifice or undue influence, will be fatal to the validity of the contract. Story, Eq. Juris. 224.

If the vendor say or do any thing with an intention to divert the eye, or obscure the observation of the buyer, even in relation to open defects, he will be guilty of fraud. 3 Bl. Com. 165.

The seller is liable if he fraudulently misrepresent the quality of the thing sold, in some particulars, of which the buyer has not equal means of knowledge with himself; or if he do so in such a manner as to induce the buyer to forbear making inquiries which, for his own security, he would otherwise make. 2 Kent, 487. So an action will lie against one not interested in the property, for making a false and fraudulent representation to the seller, whereby he sustained damage by trusting the purchaser on the credit of such misrepresentation. 6 Johns. 181.

To render a party liable for representations of character, made by him, it is necessary to prove that they were fraudulently made. 1 Carter's Ind. Rep. 176.

Where a person designedly or knowingly causes a false impression to be entertained by another, who is thereby drawn into a contract injurious to his own rights or interest, it is a case of fraud which will be relieved by courts. 8 Blackf. R. 45.

A party is not responsible for a misrepresentation of the legal effect of a contract. *Ib.* 277.

The vendor of goods, though defrauded in the sale by the vendee, cannot treat the sale as a nullity, whilst he willingly holds in his hands a valuable consideration which he received for the goods. 7 Blackf. Ind. R. 501.

Misrepresentations by one contracting party to the other as to the value or quantity of a commodity in market, when correct information on the subject is equally within the power of both parties with equal diligence, do not, in contemplation of law, constitute fraud. 5 Blackf. R. 18.

When a party has been led to enter into a contract by the fraud of the other party, he may, upon discovering the fraud, rescind the contract, and recover whatever he has advanced upon it, provided he does so at the earliest moment after he has knowledge of the fraud, and returns whatever he has himself received upon it. 1 Denio's N. Y. Rep. 69.

The general rule is that the party who would rescind a contract on the ground of fraud, for the purpose of recovering what he has advanced upon it, must restore the other party to the condition in which he stood before the contract was made; but where the party who practised the fraud has entangled and complicated the subject of the contract in such a manner as to render it impossible that he should be restored to his former condition, the party injured, upon restoring, or offering to restore what he has received, and doing whatever is in his power to undo what has been done in the execution of the contract, may rescind it and recover what he has advanced. *Ib.*

A contract, however fraudulent, is not a nullity; it is valid as to all the parties to the fraud, and to all others except those who are injured thereby. 1 Iowa Rep. 467.

Where goods are obtained by a purchase effected through the fraudulent representations of the vendee, the vendor may rescind the contract on the discovery of the fraud, and reclaim the goods. 10 New Hamp. Rep. 477.

If, however, the fraudulent vendee before the contract is rescinded, sell the goods to a *bona fide* purchaser, for a valuable consideration, without notice, the latter will obtain a good title.

A creditor of the fraudulent vendee, whose debt existed at the time of the purchase, cannot prevent the vendor from rescinding the contract, by a mere attachment of the goods, as he cannot thereby obtain a better right in the goods than that of his debtor. *Ibid.*

But a subsequent creditor, who may be supposed to have given credit upon the apparent ownership of the vendee, may hold the goods if he attach them before the contract is rescinded by the vendor. *Ibid.*

Where the defrauded party rescinds an *express* contract, he cannot set up an *implied* one, and sue the other party thereon, 1 Doug. Mich. Rep. 330.

Fraud does not render a contract void, but only voidable, at the option of the defrauded party. 1 Doug. Mich. Rep. 330.

If the defrauded party elect to affirm the contract, he is bound by it in all respects. *Ibid.*

If a vendor having a right to rescind a contract of sale of goods, on account of the fraud of the vendee in making the purchase, bring *indebitatus assumpsit* to recover the price of the goods, he thereby affirms the contract. *Ibid.*

Where there is an *express* contract none can be *implied*. *Ib.*













